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Adv.K.GOPHAKR1SHNAN

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Under Sec. 3 (1) of the Kerala Privat
orests (Vesting and Assignment) Act, 197 Forests (Vesting and Assignment) Act, 1971
the ownership and possession of all private the ownership and possession of all private
forests in the State of Kerala stood transferred to and yested in the Govenment free fron: all eilicumbrainces. The Act wäs deciared un
constitutional. The owners were derived of constitutional. The owners were deprived of
their properties without paying any compentheir properties without paying any compen-
sation and the purpose of the legislation yiz. agravian reforms has also been defeated, Government not having assigned the land to
agriculturists and the landless. That Governagriculturists and the landless. That Govern-
ment was prevented from making the assignments in view of a subsequent legislation is no o
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 purposes of the temples and to. meet the
expenses in connection thereto. When that


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 The classification of the temple employees

In Re: Temp
1995 ther hand the Preamble to the Hindu gious Endownent Act suggests that the Act is intenided not only for the better administration of the Hindu Religious and Charitable Institittions, but also their governance. By
'governance' is meant to rule with authority The various provisions of the Acte extracted in the foregoing paragraphs would indicate that the Depariment is the predominant force as
far as the temples in Malabar are concerned. are concerned.
(Paras 26, 28)

It is not open either to the Government or to the Departrment to throw up their hands in
despair anid say that they are not possessed of sufficient funds io meet the deinininds of the temple employees. The Department which is
authorised by the Act to administer and govern the enidowments has a duty to harness the resources and to pay living wages to
temple employees. Even otherwise, the temple employees. Even otherwise, the
Goverimineint cannot disclaim the liability to pay living wages to the employees in view of the vesting of temple lands in the Goverrmment as on $1-1-1970$ as well as the vesting of the
private forests owned by the Devaswoms in private. ofrests owned by the Devaswoms in
(Phe Mailabar region. 29,30 ) It is common knowledge that Devaswoms
 thus received was utitised for the expenises of the temple. When the properties had already
vested in the government, it only stands to reason that the Devasioms shouid be paid the value of those commodities ai the eprevail
ing market rate: The claim for living wases is also based on. the principle "equal pay for equat wort The employees in the temples adminisistered by the are paid salary and other emolumenits at the rates paid to Government serviants. On the other hand, the employees of the temples in
Malabar are getting only a pittance. Iissilear that hie mployees of the temples in Majabar salary and other remunerations. They possess
 ceen a clear violation of the fundamental
erstwhile Malabar area $\quad$ A. I. R.
Original Petition is allowed as above.
erstwhile Malabar area $\quad$ A. I. R.
Original Petition is allowed as above.
as allowed. AIR 1995 KERALA 172
P. BALANARAYANA MARAR AND
P. K. BALASUBRAMANYAN, JJ.

In re: Temples in the erstwhile Malabar
area O.P. No. 214 of $1992-S ; D /-21-7: 1994$.
Madras Hindu Religious and Charitable Endowments Act (1951) (as applicable to
Malabar region of Kerala)
Ss
and Employees of temples in Malabar region State Govt. is daty bound to cmsure that they tions - Appropriate directions issued.

Temples - Employees of - Wagès and
service conditions. service conditions.
Public interest tit

Public interest litigation - Employees of
temples in Malabar - Living conditions --
Probe into and steps to remove injustice. Cy Probe into and steps to remove injustice. Cy-
pres - Doctrine of - Applicability
to religious trusts.

Constitution of India, Arts. 14, 16, 226.
Per K. P. Balanarayana Marar, J.-. .
In the instant case the Court found that tion of the temples in the erstwhile Malabar area and the living conditions of the em-
 appropriate steps should be taken to remedy
the evil and injustice.
(Para 4)

The provisions of the Madras Hindu Reli-
ious and Charitable Endowments Act (195.1)

 temples and the utilisation of the income therefrom. On a consideration of the various.


 in the matter of supervision and contro of the
religious institutions by the HR \& CE Department (Department for short) and the JL/LL/Ke28S/94/DVT

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from the date of deposit. 3. Having heard learned counse amount awarded cannot be withheld to the petitioner relying on the decision of the Horble dismissial of the petitioner's application for releasing the amount will go against the very spiritof the Supreme Court dcision, whinors, illiterate, semi-literate and literate persons by preventing wastage of funds by placing the amount in fixed deposit with a nationalised when awards are passed in favour of an individual for faitly large anounts such amounts are likely to be frittered away by him by spending the mioney on unproductive or counter productive ventures so that in may not
be available to him on a future occasion when
 tuality that the Hon'ble Supreme Court issued a direction that the amount would be kept in deposit for a fixed period so that the mount will not be wasted away. Everty to the claimants to apply for withdrawal in case of emiergency. Going by the Supreme Court
 awarded shall be always kept in fixed deposit

4. The petitioner is admittedly 62 years
 such a situation to keep the moiney in deposit for a period of five cyars vill result in manifest
 responient to release the amount held by it under Extibitit P-2 fixed dejosit receeipt
forthwith. Accordingly, $I$ direct the addiforthwith. Accorangly,
tional third respondent, Andhra Bank, Erria-
 as per Exhibit P - fixed deposit receipt within
 ever is more advantageous to the petitioner

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 2．The State of Kerala shall fix the rea－
sonable remuneration to be paid to the
隹 of the Act； temples which do not come under the purview



 1．The Government of Kerala and the
Hindu Religious and Endowment Depart－ For these reasons the Court issued the
following directions： （I9 Sejed）


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 the best of their effort．So long as temples arie duties with all sincerity and earnestness and to ployees are to be given fair wages and then
alone can one expect them to perform their


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 priate legislation，a period of oriè year granted
 A table Endownents Act in its application to 12．Since inequality is wit large on the face
of the Madras Hindu Religious and Chani－号
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0 wages to the temple employees shall come


 thereunder；：
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0 such income to the owners to whom the lands
 Assignment Act；
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0 8．State shall ensure atilisation
income which they are getting from the forest basis；
 of revision of annuity periodically in accord－ basis shall be paid without further delay； statements in respect of the temples within a
period of one year and the annuity on that
 the purpose of such payment；
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 the Department or not；
 the fact whether they are big or small and
 （ $i L$ exed）$\because \quad \because \quad$ osfe sisnin snolempl a conistructive trustee in possession of trust the doctrine of Cypres can be applied to who were hoiding these properties for the with which these trusts were originally created having stepped into the shoes of the trustees well being is also an object aking to the object


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 various temples has led to a situation where ay jo sarueung ayl ol mojq lepuoij arou pue puojos SiLL Honesurduos Kue inoupin




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 but also the other public temples numbering
about 2000 which do not come juithin the


 karan Nair Commission．



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 Devaswoms and temples situate in the Mala－

 available after meeting the expenses of the
 fund could be utilised for the benefit of other




 obligation towards the specified devaswoms






 The State as the sovereign，has ar obliga－
tion to see that the temples are managed



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 the temples and to expend moneys out of the pue．summseaəa ачा uienuitu ol solnadond on the Government which is holding the trus position of a constructive trustee there is no
difficulty in holding that there is an



Koshikode as if the Commissioner
Department is the 2nd resplent Department is the 2nd respondent. the .2nd respondent is described as $\mathrm{C}^{\circ}$ sioner, High Religious Endowments mission, the 2nd resporident is rea Commissioner, Hindu Retigious and table Endowment (Administriation)' described accordingly in this judgment All other proceedings connected pleaded on their applications the Kerala Thanthri Samajam is seen to have stated that many temples in in erala are in a
disastrous condition and in some temples disastrous condition and in some temples
even the daily
foojas are not conducted. We find from the issue. of the Hindu dated 31st Bhiattathisipped, President of the T. T. Ravanan Bhattathiripped, President of the Travancore
Devaswom Board, had also stated that in Order to look after the temples in the erstwhile Malabar area on the lines of the temples under the Travancore and Cochin Devaswom
Boards, a separate Boafd should $D$. Boards, a separate Boafd shouid be set up and then only it will improve the donditions of the
temples and better the service conditions of the employees of the temples conditions of

The above news item, appearing in a lead ing Daily, hightightstem, appearing in a lead
state of aff state of affairs existing in the temples in the
eristiviile Malabar area and also ersevthile Malabar area and also the .poor
living conditions of the employees in the said temples. The matter cenites round a "human
problem". problem".

We are satisfied that publicinterest reguires
hat the administration of the temples in the that the administration of the temples in the
estwhile Malabar area and the eliving con-
ditions of the employes ditions of the employees of those e emples
siguire a probe and appropriate steps गdguire a probe and appropriate steps should
be taken to remedy the evil and injustice Therefore, in emexcrise of the powers vested in this court under Art. 222 of the Constitution of India, we issue notice (1) 10 the Statition of
Kerala, represented by the Chief Secretaij to Governmentit. and by the Chief Secretary to
Hindu Religio . Commissioner,

 the above matter should not be taken as a
pubici interest .litigation and appropriate public interest .litigation and appropriate
orders pased by this Court as remedial measures, Notice. returnable in 10 dajs. The.
matter may be numbered as Oliginal. Peti. matter may be numbered as Original Peti-
5. The State of Kerala is the -Itt respon-
dent. The 2nd respondent is styled assteom-
missioner Hid . siatements are being filed by the Commissionier, Hindu Religious alied ay the Charitabmicm- En-
dowment (Administration) Department,


 ．8．In answer to the direction of this Couth รว ${ }^{\text {dural }}$








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 having an income ofless．Another list showing
year is also appended． Along with that state lless than Rs． 1 li，sto showing
having an income furnish any oir disposalof the orit to the temples
ajust and daith




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 social welfare thet the special grant of
mentioned that
tenanco of temples has been doubled．



 pla taking expedition law．The matter is delayed，
in accordance
ind plation of the Governm sens for fixing annuity

 salaries are to be Regarding the unified De－
倍 The Depar properly applied．thas to be done familea． families．Neither the Goververtheir assets．
and control over it that the
 varicore－Cochin area．Ths families in the form1 temples
unincorporated Devaswoms ons andes in Mala－ Cochin Devaswo considered simiar to tre temples addininisteram Boards．The Mala the

 that the Malabar ensurate with their work． 9． the Deve if of the list respondent a finalise the accom as early as possible． completed so far．It is all possible steps to
Government will tak and to payithe amount to


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 Kazhakam are（1）making of garlands for the Kashakam．The functions attached to the
Kazhakam are（I）making of garlands for the Mahadeva Témple．He is employed as a respondent，has spoken about the wage spaid
to him．He is an employee of Thiruyegappura



 examined on the side of the respondents the basis for the same，All the witnesses the employees of the temples in Malabar
deserve a better deal and，if soo，what should be言
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 on all the aspects involved． Arguments were therefore heard in extenso management of the temples in Malabar．
 aspect of the conditions of the temples also as


 item highlighting the pitiable condition of the
employees of the temples in Malabar，the
 respondents． and 2 and the counsel appearing for the other Sankara Menon on behalf of respondents 1 exhibits．Eleven witnesses were also examin－
ed．Heard senior Government Pleader Sri R20 were tendered in evidence and mared
exhibits．Eleven witnesses were also examin－ 11．On the side of respondents Exts．R1 to
R20 were tendered in evidence and marked as constituted in future．䚗
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 Pay＇ment of reasonable wages for their live－
lihood is demanded by those associations．
Request is also made by the respondents to
substitute has to be appointed when he takes
leave and the liability to pay his wages is on

 by way of annuity．He would say that every
temple employee should receive at least only Rs． 34091 ／－received from Government

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 Formerly he was getting three nazhies of －
uryselfey vul－$/ 00$ sy ol $-/ 08$ sy
 （sic）temple，，hine ex Rs． $50 /$－as salary and tl

 respectively．Accor not sufficient for his livelihood．He wante kams are paid Rs．
respectively．According to him the salary pai
 Mempie the Melsanthi is paid Rs． $450 /$－and th
 paddy per month apart froman ampunt getting 5 paias 7 ed angazhies and 2 räzbies o is getting a monthly remuneration．of Rs． F ．
Formerly the wages were paid in kind．He wa

 obtain a decree，the fruits of which are yet th


 Ext．R3（a）produced by him shows the 14．R．W． 3 is the president of the 3rd
respondent union which has 920 members．

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－$1995 \quad$ In $\mathrm{Re}:$ Temples in the erstwhile Malabar area
Devaswom Boards and the temple employees the scale Rs． $445-20-645-25-895-30+545$ the scale Rs．
highest grade is Imam Alim（Muncoli gra 720－25－970－30－1120．Imams medical allowance at the rate of Rylol month．These scales were revised $\mathrm{m}: 195$ Imams of all the mosques in Punjab，Harya： Wakf Board．They are being paid regulai Wakf Board．They are being paid reg
and treated as regular employees． and reated as regular employees． Wakf Act，the Supreme Court observed th community workship is the Imam and $t$ objective and purpose of every mosque bei tion of the Board under the Act to ensure th Board cannot escape from its responsibiliti for proper maintenance of religious service




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 economic set tup thé too nceed sustenances 24．On the ouest on as to who should p：
the remuneration of the Imbins the remuneration of the Imams andatho
much，the Supreme Court observed that it much，the Supreme Court observed that it
Wake Board cannotescape from its tespons bility as the Mutawallis under Section 36 ： the Act are under the supervision and contry
of the Board．The Imams are appointmént E the Mutawallis．A contention was Faise before the Supreme Cout that the financh position．of the Wak Boards was such
they cannot meet the obligations of payingth Imams as they are being paid in the State Punjab．Repelling this contention the Su
reme Court－held（AIR 1993 SC 2086 at O
＂If the Boards have been entrusted with th
 to be honoraryand are not considered as
 qualifications．There are threct grades of
Imams under，the Punjab Wak̃ Board．They



## A．I．R． 

 spiritual atmosphere itself has comevanishing point on account of lack of proper vanishing point on accouples and the dissatis－ faction among the employees．fi，Even the aninuity payable by the Governmen is offi－
paid regularly．The department and its of paid regularly．The department aply their
cers．have totally neglected to apply minds in this region．From his experience he would say that in most of the temples
Malabar，Poojaris and other people are Malabar，Poojaris and other pe． $100 /$－per
getting atal remuneration of Rs． month．There are certain temples in which
poojaris and other persons are getting poojaris and other persons
Rs． $50 /$－per month or even less．

20．．The Secretary to the Goverriment dealing with the Hindu Rengent who inciden－ tally is the Finance Secretary＇ ＇hile examined
as R．W： 9 ，stated that he is generally con－ E
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0 Malabar．He is aware of the poor conditions． $c$
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 with a view to improve the ended to

唇 Malabar temples are getting only a small su
by way of salary．Ths matter had been brought to the notice of the Governme the
 pJumuasp 21．Then there is the testimony of the Commissioner orledge of the temples in Mala－ bar and the conditions of service of the
 area is very low．At the same time the temple
 salary like other Government servants．There manner or method of work between the
employees under the Travancore and Cochin Kasaragod the northernic and their way of
ing the worshipping public andes，they are all
life and worship in the temples
alike in all pars or Malabar K̇shethra 19．The Presiden ．W． 7 spoke about the－ poor conditions of the employees ampetent

 accore to him tutumployees are hali－starved
 paid，according to him，

18．The President of the Kerala Kshethra Samrakshana Samithi，whe various aspects
R．W． 8 ，has spoken about the the employees in Relating to the conditions of the employees in the Malabar region as well as in．He had oc－ casion to travel from one end olmost all the important temples．He stated that there is a drastic perceptible difference be and Cochin parts of the Kerala State and that exist in Malabar region．His

The employees of the temples in the Malabar region arc
minimal amounts as the salary．A Poojari gets Rs． 501 －per mensem and a les in Malabar Rs． $2 /$－per monthe employees like Kazhakars and other persons are paid pittance as salary． The employees in ar decently paid similar to parts ofnent servants with pensionary bene－ fits．－The religious cun the whole State in all
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 requirservipervision of he State. The need
for supervision has been felt and in addition
 management or Wakfs, though it vests immesojects and reasons it is mentioned that the



[^0]1995 In re : Temples in the erstwhile Malabar area

 had already yested in the Governments, it onnly
stands to reason that the Devaswoms should be paid the value of those commodities at the prevailing market rate. In other words, the annuity fixed by the Government has to be periodically revised. Since the final annuity
statement has not so far been prepared, such preparation has to be made on the basis of the obseryations made by us in this judgment. 32. The claim for living wages is also
based on the principle "equal pay for equal based on the principle "equal pay for equal
work $k^{\text {. The }}$ The employes in the temple adminwork". The employees in the temple admin-
istered by the Travancore and Cochin Devaistered by
swom Boards are paid salary and other
and AThiolimentis at the ratés paid to Givernment
servants. On the other hand, the employes of servants. On the other hand, the ernployees of
the temples in Malabar are getting only a pittance. This aspect has been spoken to by the witnesses examined on the side of
respondents 3 to 16 and is also admitted by respondents 1 and 2 in their affidavits and respondents 1 and 2 in their affidavits and
statements as well as by RW5 9 and 10 al the
time of cevidence.

33. The Supreme Court in Randhir Singh

 Preamble and Art. $39(\mathrm{~d})$, it is clear that the
principle equal pay principie "equal pay or equal work is,
deducible from those Articles and may be properly applied to cases of unequal scales of pay based on no classincation or irrational
classification though those drawing the different scales of pay do identical work under the same employer.
34. In Grih Kalyan Kendra Workers'
Union ऐ Union of India, AIR 199i SCk 1733

 matics formula while considering the princi-
ple of equal pay for equal work. There must be à reasonable similarity in the nature of work, performance of duties, theie qualification and the quality of work performed by them. The Supreme Court observed that it is
peermissible to have classification, but that must have a reasonable relation to the object sought to be achieved.
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 the provisions of any of the labour laws are an obligation to ensure observance of the
various labour laws by the contractors and if The Delhi Development Authority to be under ？
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 visions of various labour laws
workmen employed in the construction
counsel for respondent
has been assigned to the persons mentioned far as may．be．It is pointed out by leamect
counsel for respondenis 3 to 016 that
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 scheduled tribes who are willing to take up
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 The scheme of assignment of private forests is
embodied in S． 10 ．The Government is em－
 in the Government； that to give effect to the above objectives it is
 State and 10 promote ine wefrare
agricultural population in the State； to increase the agricultural production in the









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$\stackrel{\circ}{\square}$ a permissible Masis for classification and is no
hit by Art. 14 of the Constituion This cout hit by Artib I4 of the Conssitiution. This cour
stated that it is open to the State to reasonabl classify persons for legislative purposes and
deal equally with all persons belonging to a
 fication must be founded on ine clligsibile
differentia which distinguishes persons' or differentia which distinguishes persons' or
things that are grouped together for left out of that group, and (2) the differentia must have a rational relation io the object
sought to be achieved by sought to be achieved by the Stafuete in
question. It was theld that the containued question. It was held that the containued
application of the Act to Malabar District even 37 years after the re-organisation ampunts to inequality, but the Act was not
declared inappicicable. in view of judicial 4.
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0 decision in Shri Admir Mutt's case (AIR 1980
SC $)$ (supa), the Division Bench clarified
that if the leoshe that if the legislature does not act promptly and remove the inequality arising out of the
application of the Madras Commercial Crops



 matter and to brinig an appropriate è egisld-
identical situactis of this petition disclöse an
 Malabar District in the State of Kerala, the
 religious institutions and endo enment in that Hegno Religious Institut legisilation viz, the

 inequality in the wages paid toं thee émpilyes of highlighted in in the fererpectiving peaions hastaphs. This


 The classificiation of thie temple employees in
the two regions into different categories is not
become a part of an anther Stem thate in is not
bers
discriminatary since the classification on
geographica considerations
historical reasons. While holding so, the
Supreme Court observed that inequality is Supreme Court observed that inequality is
writ large on the face of the im pis writ targe on the face of the impugned statute
in its application to the District of South in its application to the District of South
Kanara only and that it is perilously near the periphery of uriconstitutionality Ift wes made
clear that if the Karnataka legislature does clear that if the Karnataka legislature does
not act promply and remove the inequality arising out of the application of the Madras Act of ths it the Distirct of South Kanara
only, the Act will have to suffeti a serious and only, the Act will have to sifffer a setious and
successful challenge in the not distant future. The Supreme Court exprecssed hope that the
The Government of Kainataka will act promptliy
and move'an appopiop and move an appropnate legisition, say,
withini a yaror so In the concurrent judg-
ment rendered by His Lordship Justice ment rendered by His Lordship Justice
Shinghal it is opined that it is necessary that the State Goveriment should examine wheMadras Act of 1951 is really necessary the no advantageous for the proper administration
of the religious and charitable institutions ànd endowments in thc State as a whole, and if
not, whether it is an inequality and is
 Distitict can be justified with reference to
Arti-14 of the Constitution Art 14 of the Constitution.

W5. A. Division Bench of this Court thad
Occasion to coinider this aspect in M/s.
United Konari Mills v. State of Kerala AIR
 Commitial Crops Markets Act Act Act 20 of
 erstuhie Malabar District in the State of 0
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 Whogicalait was obberved that different laws


кегii uo! arise whether the income from those lands can be utilised only for the purpose of the temples to which those properties, belonged, or whener the income can be
temples as well. The direction issued by this temples a theil. The dirccion issucd by his
court on the lines of the directions issued by
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 Corporateon whà a proposàl by the Corpo-



 in view of the Kerala $P$ and Assignment) Act.
and
 emple in Malabar ownëd vast areas of forest





 | Seva Sangam, |
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| that the Devaswoms owned $1,50,000$ acres of | forest iand from which an aniual income of

##  <br> aforésaid endoowments.










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 application to the erstwhile Malabas region (ARP; 1993 Kerala 24 ) (supra)
clearly writ large on the face of the Act in its Division Bench in inited (supra) inequality is
(ARR; 9993 Kerala 248 .




 hie same cond possess the - same qualifications
tions and
throughout the Satee. The differentia has thus
no raional relation to the object sought to founded on intelligible differentia. Persons in
the same calegory disharge the same func-
hions and possess the - same qualifications
 2. Nature of conitrol to be exercised by
Goverrinent- vere the administration of the
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 The other hand, Has to manage the temples
under its control from the incoma of their

 autonbmous units. The Travancore Deva-

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 : "The question of the unification of the 1961. The order reads unifying the laws. The reasons for
appointment of the commitee are stated din
the order G.O. (MS) $772 /$ Revenue dt. $12-8-$ erstwhile Malabar area

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 \$66I took shape in pursuance to the said bill. He
has also spoken about the constitution of
Sankaran Nair Commission and the report. guruiou ang SL6I u! autipuos intlg woms













 dent on $1-2-1973$. Nothing was heard there-
after of the bill and R. Ws. 9 and 10 are not in a


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 and convenient way of disposal of files.









 trustees vis-a-vis the denomination has been
held to be only in the capacity as representatives, the denomination can always chal-



 properties of the temples having been vested Act and the Rrivate Forests (Vesting and
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0 temples in Malabar: The question whether
there should be a separate legislation for 4.7
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 The view of the committee that the system on
management by hereditary trustes seems to

 management of the Guruvayoor temples. which also had been underithe'
well as offerings are collected by the Trustees
 aql วas, collection of income and incurring of ex-

 way of Government taking control of the
temples is unsustainable in view of two Full Bench decisions of this Court relating to Guruvayoor Devaswom viz. Krishnan v Guruvayoor Devaswon Managing Com-
mittee 1979 Ker LT 350 : (AIR 1978 Kerala 68) and Narayanan Namboodii v. State of 160). In both the decisioris this court held that the Guruvayoor Temple belongs to the denomination of Hindus having faith in п! Кpoq oq₹ suipq se pasiusooai. uazq suope
 and administer the teruples and the hereditary representatives, their actions being liable to be called in question by the denomination either by proceedings before the statutory
authorities constituted under the Madras
 The civil court by institution of suits as
provided for in the said Act. In Narayanan provided for in theodiri's case (AIR 1985 Kerala 160) (supra).the Full Bench held Sections 3 and 4
of the Guruvayoor Devaswom Act, 1978 to be of the Guruvayoor Devaswom Act, 1 India. It was held that the provisions of Section 4 clearly indicate that a commitiee belonging to the denonimation of Hindus
 yonns pue 8L6I '1OV womsenag Iookennanges

 Guruvayoor Devaswom had been under the siupumopug sno!at!
 lature. A scheme has also been framed earlier 1995 Kè./13 VJ G-34

## -

 authorities to bring in a legislation to ameliorate the poor working conditions or the temple employees in Malabar and for the uplift been under the consideration of the
 nothing concrete had taken shape till now. Reference has already bcen made 1 has also spoken prepared in 1972 and R.W. 1 has also spoken
 ernment. Ext. R 1 is the first of its kind. But we



 that he had considered the mat. Predictable


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51. On behalf of the respondents $i$ and was argued that formation of a Board fort
termples in Malabar is not feasible since
 Trusts. Unlike the temples in Travanc ${\text { Cochin which are owned by the } S_{i}^{\dagger}}_{\substack{x}}$


 this

 affairs. The witness was a member of that

 jo vo!peatino uo ínes ol uәq pue saloe rubber, pepper and other commercial products so that the income so obtained for the these properties coustes. The witness stated that this proposal



 karan Nair Commission, no concrete steps were initiated by the Government for the redressal of the grievances of the the temple employees in Malabar. The witness would

 ointed out the necessity of a separate Devaswom Board for the temples in Malabar. R.W. 3 , a functionary of 3rd respondent
Union, has suggessted an enacted law for the


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0 worshipping public in the Malabar areà. According to him there should be an in-





 $31-12-1991$, about which also reference was
made by this court in the order dated $31-1$. $\Xi$ The: documents Taxhibited

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 days. These lands were managed by
Ooralans of various temples. The Ooralan properties dedicated to the various temp Q
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"The founder of a Hindu temple who

 may be supposed to have established this


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 holding that such trustees have power to
make such a transfét."


65. The agricultural lants heid by these

temples were mostly outstanding on tenancy. | wages to the temple employees shall come |
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| into operation from Ist January, |

12. In view of our finding that inequality is

 successful challenge in case that inequality is not removed by appropriate legislation. We
grant a pefíod of one year fot this purpose.

 regions viz. Travancore, Cochin and Malabar On the lines of the recommendations made by
Ont inishna Menon Committee and We part with the case on the hope
Government would give serious consideraa
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 that the grievances of the temple employees in Malabar are . redressed to a considerable
extent and that the temples in Malabar are extent and that the temples in wa coimpetent body. We expresse our gratitude to the
learned Goverimineit Pleader Sri. Sankara Menon who appeared for respondents 1 and 2 0
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0 dents 3 to 16 and in particular 10 S/Sri
Govind Bharathan, A. P. Cbandrasekharan and P. Sanithalingam for their able assistance.
 in conclusions arrived at and the directions issued by my learied brother. But I wish to
add a few words on one of the aspects that
 obligation on the State to provide for the

 2. The first question is whether, as urged
by the learncd Government Pleader, the
Order dated 5-2-1993 (Ext. P2) and the orders
extending the term of office of the Adminis-
trator are made under Section 32 of the Act.






 (c) Wifful disobedience or failutre to coinIt is of the essence of sub-section (1) of Section 32 that the Society is guilty of one or
more of the acts mentioned therrein: The supersession of mentioned therrein: The



Exércise of extraordinary power of High Court under Art. 226 of the Constitution is discretionary. Such extraordinary power need not be invoked to quash every illegal
order or act of public authority nor should it be exercised in every case. Court has to consider if it would be just to interfere in
exercising this extraordinary jurisdiction. In exercising this extraordinary jurisdiction. In
the instant case Registrar of Co-operative the instant case Registrar of Co-operative
societies extended the term of Administrator societies extended the term of Administrator Kerala Co-operative Societiẹs Act to look Kerala Co-operative Societies Act to look
after the affairs of Kalamachal Handioom
 The ousted committee had been superseded. The ousted committee sought for removal of administrator: Held, on the one hand removal of Administrator would leave the society with
one to look after its affairs and on the other one to look after its affairs and on the other non-removal would tantamount to tolerating
ultra vires act of Registrar in extending terms of Administrator and as such petition under Art. 226 is not maintainable singce instead of aiding the cause of justice it would result in chaos and disorder dislocating the working of
the society.
$\quad$ (1992) 2 Ker LT 194 Rel. on.
(Paras $2,3,4,7,8)$
Cases Referred : Chrobological, Paras

ORDER - The General Manager, District Industries Centre, Thiruvananthapurami
(the Respondent No. 2) in his capacity as (the Respondent No. 2) in his, capacity as
Arbitrator exercising the powers under Section 69 of the Kerala Co-operative Societies Act decided the dispute in regard to the
election to. the Managing Committee of the Kalamachal Handloom: Weavers Co-operp tive Society, (the Respondent No. 4). BEFiris
award dated $30-1-1993$, he set aside the election to the Managing Committex of the aroresaid. Society. Since the Committee in
office ceased to exist, the Registrar of Co -
 93 dated 5-2-1993 (Ext. P2) appointed G. Chandrasekharan Pillai, the Respondent

 temples. As Justice Cordoso stated in Beatty
v. Guggenthcism Exploration Company, 235 NY 360. "A constructive trust is the formula through which the conscience of equity finds expression". On this basis I find no difficulty hand. As observed in Hanbury on Equity 13th Edn. at page 310:
"The broad principle is that a constructive trust may be imposed, regardless of estab-
lished legal rules, in order to reach the result lished legal rules, in order to reach the result
required by equity, justice and good conThere cannot be any doubt that equity and justice require theimposing of a constructive
trust on the State in this case. Thus, I am of the view that the direction to
the State io spend for the upkeep of the
various temples in Malabar, including the
payment of proper salary to the temple
emplogees, is justified.

Order accordingly. AIR 1995 KERALA 202
G. H. GUTTAL, J.
 tioners V .. St .
O.P No. 3544 of 1994-V; D/-25-3-1994.
Constitution of India, Art. 226 - Kerala Constitution of India, Art. 226 - Kerala 32, 33- Extraordinary jurisdiction - Every nogal order or act of public authority, nee
not be quashed - Court has to consider if it
 under section 33 of the Act whmout jurisdic-
tion in extending term of Administrator of Co-operative Society - Executive Committee of the Society since superseded, removal of Administrator would have left leave its
affairs unlooked after and non-removal tantamounting to tolerating ultra vires àct of Registrar - Petition seeking removal of GL/LL/Kel4S/94/SWC

## Thulaseedharan v. Ștate of Kerala

 State as the trustee could legally use all the surplus income after meeting its obligation forest lands have been taken, for the bend temples. By.applying the doctrine of cy pres it could be postulated that when there is a surplus fund after the particular charitable purpose had been for the benefit of other
could be utilised for institutions similarly situated. The funds available after meeting the expenses of the
Devaswom from whom the lands have been Devaswom from whom the lands have been
taken overty the State can be applied for the upkeep and maintenance of the other Devaswoms and temples situate in the Malabar area of the State to which the provisions of the.
Hindu Religious and Charitable EndowHindu Religious and Charitable Endowbeing is also an object akin to the object with which these trusts were originally created by the various authors of.families. That in India
the doctrine of Cy Pres can be applied to the doctrine of Cy Pres can be applied to reported in Prayag Dasji Varu v. Sri Rangareported in Prayag Dasji Varu v. St Ranga-
charula Varu, (1897) ILR 20 Mad 319 , Shankara Narayana v. Board of Commis-

 no impediment in issuing a direction to the Government to apply the income from the me smomsenia วul jo sumund radold 241 Malabar area. The income derived by the State from these forest lands that had vested in it under Act 26 of 1971 will have to be Malabar governed by the Madrã́s Hiñdu Religious and Charitable Endowments Act.
 temples is miserable. My learned brother has
referred to that aspectin detail. These temples
 proper upkeep and the performance of daily proojas. The State is now in receipt of the temples but for the Vesting Act. Equity temples but for the Vesting Act. Equild provide for the upkeep of these temples.
Equity is in favour of directing the State to



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# Draft Act proposed by the Committee THE MALABAR HINDU RELIGIOUS AND CHARITABLE ENDOWMENTS ACT, 2017 

## ACT NO. 2017

An Act to provide for better administration and governance of the Hindu Religious and Charitable Institutions and Endowments in erstwhile Malabar Area of the State of Kerala.

PREAMBLE:-
WHEREAS it is expedient to amend and consolidate the law relating to the administration and governance of the Hindu Religious and Charitable Institutions and Endowments in erstwhile Malabar area of the State of Kerala, it is enacted as follows:-

## CHAPTER - I

## PRELIMINARY

1. Short title, extent, application and commencement:- This Act may be called THE MALABAR HINDU RELIGIOUS AND CHARITABLE ENDOWMENTS ACT, 2017
(1) This Act shall extends to the erstwhile Malabar area of the State of Kerala comprising the districts of Kasaragod, Kannur, Wayanad, Kozhikode, Malappuram, Palakkad, Chavakkad Taluk and Kodungallur Taluk in part of Trichur District and Fort Kochi of Eranakulam District in part and applies to all the religious institutions and endowments as per the Schedule III and the institutions to which the provisions of the Act were extended under section 2.
(2) This Act shall come into force on such date as the Government may, by notification in the Gazette, appoint.
2. Power to extend the provisions of the Act to other Religious institutions and Charitable Endowments and trusts:-

Within the area of jurisdiction, where the government, on recommendations of the Board, have reason to believe that any other Hindu, Jain Public religious institutions and charitable Endowments not within the purviews of the Act, is being mismanaged and are satisfied that in the interest of such Religious Institutions, Charitable Endowments, it is necessary to extend thereto, all or any of the provisions of the Act, and of any rules made there under, it may by notification in the official gazette, extend to such religious institutions and Charitable Endowments, the said provisions, and thereupon the provisions so extended shall apply to such institutions and Charitable Endowments, as if it were religious institutions as defined under the Act.

Provided that, before issuing such a notification, the Deputy Commissioner on delegation of powers by the Malabar Devaswom Board shall publish notice as prescribed, of the intention to do so, specifying the action proposed to be taken and fixing a period which shall not be less than two months from the date of publication of the notice, from the persons interested in the affairs of the religious institutions or endowment, to show cause against the issue of the notification, and consider the objections if any, as prescribed.

Provided also that the final order shall be published in the district Gazette of which the institution is situated, as prescribed.
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3. Definitions:- In this Act, unless the context otherwise requires:
(1) "Government" means the Government of Kerala.
(2) 'State' means the State of Kerala,.
(3) 'Act' and 'Rules' means the Malabar Hindu Religious and Charitable Endowments Act, 2017 (Act No. ---------- and the Rules made there under, respectively)
(4) "Board" means Malabar Devaswom Board Constituted, under Sec. 6 (1) of this Act.
(5) 'Commissioner' and 'Secretary' means the Commissioner and Secretary appointed under Sec. 26 (1) of this Act.
(6) 'Deputy Commissioner' means the 'Deputy Commissioner' (Law), Deputy Commissioner (Admn) and Deputy Commissioner (Audit) appointed under Sec. 26 (5) of this Act.
(7) 'Assistant Commissioner' means the 'Assistant Commissioner' appointed under Sec. 26 (5) of this Act.
(8) (i) 'Auditor' means the Accountant General of Kerala in relation to the audit of the Accounts of the Board.
(ii) 'Deputy Commissioner (Audit)' means the auditorappointed by the Board for internal audit of the Accounts of the temples under the Board.
(9) 'Executive Officer' means the officer appointed by the Board under Section $29(\mathrm{H})$ to carry out the day to day administration of the temples, as prescribed.
(10) 'Malabar Area' means the erstwhile Malabar referred to in sub section (2) of Sec. 5 of the States Re-organisation Act, 1956 (Central Act 39 of 1956).
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(11) (i) 'Religious Institution' means temple, Mutt, religious endowments, Trusts or specific endowment;
(ii) 'Temple' means a place by whatever designation known used as a place of public religious worship and dedicated to, or for the benefit of or used as of right by the Hindu Community, or any Section thereof, as a place of public religious worship.
(iii) 'Specific endowment' means any property or money endowed for the performance of any specific service or charity or in connection with a religious institution or for the performance of any other specific service or charity or in connection with a religious institution or for the performance of any other religious Charity.

Explanation I : - Two or more endowments of the nature specified in this sub section the administration of which is vested under a Common scheme settled shall be construcd as a single specific endowment for the purpose of this Act.

Explanation II:- where specific endowment attached to a religious institution is situated partly within the area of application of this Act and partly outside such area of control shall be exercised in accordance with the provisions of this Act over the whole of the specific endowment as if the religious institution is situated within the area of application of this Act.
(iv) "Religious endowment" means property belonging to or given or endowed for the support of a religious institution or given or endowed for the performance of any service or charity of a public nature connected therewith or of any other religious charity and includes the temple, shrine or other religious endowment dedicated to or used as of right by the Hindu Community concerned and also the premises thereof.

Explanation:- All properties which belonged to given or endowed for the performance of any service or Charity of a public nature connected therewith or of any other religious Charity, shall be deemed to be a religious endowment within the meaning of this definition, notwithstanding whether, before or after the commencement of this Act, the religious institution has ceased to exist or ceased to be used as a place of public religious worship or instruction or the service or charity has ceased to be performed or not;
(12) 'Religious Charity' means public charity associated with a Hindu festival or observance of a religious character, whether connected with a religious institution or not;
(13) 'Court' means - (a) in relation to a Mutt or temple attached to a Mutt, the District Court having jurisdiction over the area in which the Mutt or temple is situated.
(b) In relation to all other matters connected with the temple, specific endowments attached to a temple or Mutt, not below the sub court having jurisdiction over the area in which the temple, or endowment attached to a Mutt or temple is situated.
(14) 'archaka' means and includes poojari, santhi, or other person who performs or conducts any archana, pooja or other rituals in a temple or religious institution.
(15) 'Dittam' or 'pathivu' means the schedule of articles required and quantum of requirements in connection with worship, or offering as well as the daily poojas and other general, special and periodical services, ceremonies or observances in respect of a religious institution, endowment, Mutt, or specific endowment, as the case may be.,
(16) 'Hinciu' means a person who is a 'Hindu' by birth, or conversion and who professes Hindu religion.
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(17) 'Mutt' means a Hindu Religious Institution with properties attached thereto and presided over by a preceptor, the succession to whose office devolves in accordance with the directions of the founder of the institutions or as regulated by custom or usage and;
(i) whose duty is to engage himself in imparting religious instructions or rendering spiritual service; or
(ii) who exercises or claims to exercise spiritual leadership over a body of disciples and includes places of religious worship or instructions which are appurtenant to the institution,

Explanation:- where the head quarters of a Mutt is situated outside the area of application of this Act, but the Mutt has properties within the area of control shall be exercised over the Mutt in accordance with the provisions of this Act, in so far as the properties of Mutt was situated within the area of application of this Act is concerned.
(18) 'Person having interest' or 'person interested' includes:-
(a) in the case of a temple, a person who is entitled to attend at, or is in the habit of attending the performance of worship or service in the temple or who is entitled to partake, or is in the habit of partaking, in the benefit of the distribution of gift threat;
(b) in the case of a Mutt a disciple of the Mutt or a person of the religious denomination to which the Mutt belongs;
(c) in the case of a specific endowment or other institution a person who is entitled to attend at, or is in the habit of attending, the performance of the service of charity; or who is entitled to partake, or is in the habit of partaking, in the benefit of charity;
(19) 'Hereditary Trustee' means any person or body of persons, by whatever designation known, with whom devolves by succession, and the right for administration of religious affairs of the institutions subject to the provisions of the Act, Rules and regulation framed by the Board under this Act, but does not include any body committee by whatever designation known, registered, or unregistered and society registered under the societies Registration Act and also trusts registered under the Indian Trust Act;
(20). 'Thanthri' means preceptor of a temple, who is a head of a traditional family of the 'thantries in the state' and includes a member of such family approved by the Board for the purpose of supervision of the conduct of the rites and rituals of the temple in accordance with tradition.
(21) 'Prescribed' means, prescribed by the Rules made under provisions of this Act.
(22) "Educational institutions" means, institutions established and run by the religious institutions under the Act.
(23) 'Department' means the Hindu Religious and Charitable Endowment (Administration) Department, came into being for the purpose of the Act No. XIX of 1951.
(24) 'Scheme' means the scheme of administration framed by the competent courts having jurisdiction or by the authorities under the Act till the enforcement of this Act, in respect of the temples under Sec. 58 of the Madras Act, XIX of 1951.
(25) 'Group of religious institution' means more than one religious institution, religious endowments, specific endowments and trusts under the same trustee.
(26) Said Act' means The Madras Hindu Religious and Charitable Endowments Act, 1951 as amended from time to time.
(27) 'Committee' means body of devotees duly constituted in a meeting convened and presided over by the Executive Officer, of the institution concerned, for conduct of a specific purpose as approved by the Board.

## CHAPTER - II

CONSTITUTION OF THE BOARD

## 4. Administration of Religious institutions:-

The administration vested with the trustees prior to the commencement of this Act in respect of the religious institutions its assets and liabilities and endowments attached thereto shall vest in the Malabar Devaswom Board, and the trustees shall continue to exercise the rights which are delegated to them by the Board.
5. Honorarium to the hereditary trustees:- The Hereditary trustees shall be entitled for such amount of honorarium yearly as fixed by the Government from time to time in accordance with the gradation of the institution in which the trustee is performing the functions and also travelling allowances as admissible to class I officers under the Government, as prescribed;
6. Constitution and incorporation:-
(1) The Government shall by notification in the official Gazette Constitute a Board namely Malabar Devaswom Board.
(2) The Board shall be a body corporate having perpetual succession and a common seal with power to acquire and hold property both movable and immovable and shall be in
its name sue and be sued for and on behalf of the Devaswoms as prescribed.
(3) The Head Quarters of the Board shall be at Kozhikode.
(4) The Hindus among the Council of Ministers of Government of Kerala shall nominate a member of the Board as its President, who shall be a full time functionary.
(5) Constitution of the Board:- The Malabar Devaswom Board shall consists of the following Nine Hindu Members permanently residing in Malabar area, namely:
(a) Six members from general category;
(b) Two women members.
(c) One member from the scheduled castes or scheduled tribes.
(6) The members mentioned in clauses (b) and (c) shall be nominated by the Hindus among the council of Ministers of Kerala State and the members mentioned in clauses (a) shall be elected by the Hindus among the members of the Kerala Legislative Assembly as provided in Sub. Section 7.

Provided that the members nominated or elected to the Board under Sub. Section (6) shall make an Oath in the presence of the Secretary to the Devaswoms Department of the Government of Kerala, to the effect that the member "has been professing Hindu Religion and a believer of God and temple worship and will discharge the duties safeguarding the interest of the religious institutions and devotees" before enters upon office.
(7) Procedure for election:- A meeting of the Hindu members of the Legislative Assembly of the Kerala State shall be summoned under the authority of the Government of Kerala, by the designated authority in this behalf, to meet at such time, place and date as may be fixed in consultation with the Government, for election of
the members to the Board. The election shall be held in accordance with the rules specified in the schedule II by the person commissioned by the Governor who shall preside over the meeting.

Explanation:- For, the purpose of this section 'schedule caste' and scheduled tribe' shall have the same meaning as assigned to it in clause (24) and (25) respectively of Act - 366 of the constitution of India.
7. The Honorarium and TA to the President and Members:- The President and Members of the Board shall be entitled for a monthly honorarium of Rs. 20,000/- and Rs. 10,000/- respectively, and sitting fees for every meeting as fixed by the Government from time to time, to the members who participate in the meeting and travelling allowance at the rate admissible to Class I officers under the Government of Kerala.
8. Term of Office of the Members:- Save as otherwise provided in this Act, Every member of the Board shall continue in office for four years from the date of notification of constitution of the Board.

Provided that the elected and nominated members together shall constitute the Board, and hence notification shall be made only after completion of both the election and nomination together.
9. Disqualification of Members of the Board:- A person shall not be eligible for election or nomination as a member, if such person:
(a) is not a Hindu,
(b) is less than 50 years;
(c) is of unsound mind and stands so declared by a competent court;
(d) has applied for being adjudged as an insolvent or is an undischarged insolvent.
(e) has been convicted for any offence by a Criminal Court for any offence involving moral turpitude.
(f) or is subjected to such offence which in the opinion of the State Government make him unfit to hold office.
(g) has or any previous occasion been removed from office by an order of a competent court from any position of an institution under the government as well as a religious institution, trust or endowment for mismanagement or corruption.
(h) is an office holder or servant of government or a local authority, is a member of Parliament or Legislative of any state or
(i) a member of any local self government body.
(j) is interested in a subsisting contract for making any supplies or executing any work on behalf of the Board, or having interest adverse to that of the Board or religious institutions.

## 10. Supervening Disqualifications:-

where the Government are satisfied that a person elected or nominated as a member of the Board has become subject to any disqualifications specified in Sec. 9 (a) to (j) or ceases to profess the Hindu Religion, the Government may by order, for reasons to be recorded therein, remove such member from office.

Provided that a member shall not be removed under this section, unless such member has been given a reasonable opportunity for being heard.
11. Resignation by a member:- The President or a member of the Board may in writing under ones own hand, addressed to the Governor of Kerala, resign membership and the resignation shall take effect on the date of acceptance of the same by the Governor.
12. Filling of casual vacancies:- If any member is unable by reason of ill health, death, resignation, removal or otherwise to complete
full term of office, the vacancy so caused shall be filled by nomination or election as the case may be and the person so appointed or elected shall fill such vacancy for the remaining portion of the term for which the member in whose place such person appointed would otherwise have continued in office.
13. Removal of President and members:- The Government of Kerala may remove the President or any member of the Board;
(a) if the President or such member refuses to act or become incapable of acting or acts in a manner which is found to be prejudicial to the Government, Board or religious institution.
(b) if the President or any member fails to attend any three consecutive meeting of the Board without an excuse which is in the opinion of State Government sufficient.
14. The standing committees:- (1) The Board shall constitute, for its proper functioning, the following standing committees with three members each; namely:
(a) Standing Committee for Finance and resource mobilization
(b) Standing Committee for works, Development and environment,
(c) Standing Committee for establishment temple Arts and Devotional Service.
(d) Standing Committee for Appeals.
(2) The President of the Board shall be the Chairperson of the Standing Committees for Finance and Resource mobilization and Appeals.
(3) The Board shall nominate one of the member of each of the Standing Committee referred to in (b) and (c) above as its Chairperson, who shall preside over the meetings of the Standing Committees.
(4) The duties, responsibilities and the conduct of the proceedings of the Standing Committee shall be as prescribed.
(5) The Standing Committee shall meet at least once in a month.
(6) The recommendations of the Standing Committee shall as far as possible be unanimous and in case of any difference of opinion among the members in respect of any subject matter before it, the reasons for the difference of opinion, which shall be recorded by the member or members duly signed and it shall be placed before the Board for a lawful decision.
15. Meetings of the Board and procedure of the meetings:-
(1) Ordinary meetings of the Board:-

The Board meetings shall be convened in the head quarters of the Board at Kozhikode or at such other places as decided by the Board and shall meet at least once in every month and as often if it is necessary for the transaction of the business as prescribed.
(2) Every meeting of the Board shall be convened by the Secretary in consultation with the President of the Board and at least with 7 days notice of the meeting. The Secretary will also be present at the meetings of the Board.
16. Special Meetings:- A special meeting of the Board shall be convened by the Secretary on receipt of a requisition signed by not less than 5 members specifying the urgency of the meeting and the business to be transacted at such meeting.
17. Quorum of the meeting :- (1) Five members shall form the quorum for the meeting of the Board.
2) If, at the time appointed for the meeting or within half an hour thereafter, there is no quorum, the meeting shall stand adjourned. The Secretary shall fix a date in consultation with the

President; for the adjourned meeting, and one week's notice of such date shall be given to the members.
18. President to preside at the meeting:- The President shall preside at every such meeting of the Board and in the absence of the President the members present shall elect one among themselves to preside over the meeting.
19. Decision to be by majority of votes:- (1) Save as otherwise provided by this Act, every agenda coming before the Board shall be decided over by majority of votes of the members present and voting in the meeting, if not unanimous.
(2) In case of equality of votes, the President or the presiding member shall have a second or casting vote.
20. Minutes of the proceedings:- Minutes of the proceedings of all the meetings shall be recorded by the Secretary then and there and shall be signed by the President or by the person presiding the meeting.
21. Validation of proceedings:- No act or proceedings of the Board shall be deemed to be invalid merely by the reason of any defect in its constitution or on the ground that the President or any member thereof was subjected to any disqualification under the provisions of the Act; or disqualified or ceased to hold office, or by reason of such act or proceeding having been done or taken during the period of any vacancy in the office of the President or any member of such Board.

## CHAPTER - III

## TRANSFER OF ASSETS AND LIABILITIES OF THE

 HINDU RELIGIOUS AND CHARITABLE ENDOWMENTS (ADMINIST RATION) DEPARTMENT TO THE BOARD22. Transfer of assets and liabilities of the Hindu Religious and Charitable Endowments (Administration) Department to the Board:-
(1) On Constitution of the Board under Sec. 6(1), the Hindu Religious and Charitable Endowments (Administration) Department shall continue in the Board in the same name as a vanishing category, consisted of the sanctioned posts to that department. All the assets and liabilities of the department shall stands transferred to and vest in the Board.
(2) The assets of the abolished Department shall be deemed to include all rights and powers and all properties, whether movable or immovable, belonging to or vested in that department, their funds, cash balance, if any, investments, dcposits, and all other interests and rights in or arising out of such property and all books of accounts, documents kept or maintained by it, and its liabilities shall be deemed to include all debts, liabilities and obligations of whatever kind then existing and pertaining to that department.
23. Effect of vesting of assets and liabilities to the Board:-
(1) unless otherwise expressly provided by or under this Act, all contracts, agreements and other instruments of whatever nature subsisting or having effect immediately before the abolition of the department and to which the department is a party or which is in favour of the department shall be in full force and effect against of in favour of the Board constituted under this Act and may be enforced or acted upon as fully and effectually, as if, instead of the department; the Board had been a party thereto or as if they had been entered into or issued in favour of the Board.
(2) If any suit, appeal or other legal proceedings of whatever nature by or against the department is pending, the same may be continued, prosecuted and enforced by or against the Board referred to in sub-section (1).
24. Employees of the Department:- (1) Every full time employee of the department shall be deemed to be the employee of the Board, with the same terms and conditions of service, with the same rights and privileges as if the employee would have held the same if the Madras Hidnu Religious and Charitable Endowments (Amendment) Act, 2008 (Act No. 31 of 2008) had not been enacted, until altered by the Government.
(2) As and when a vacancy occur in the department referred to in Section 22 (1), the eligibility for promotion shall be determined in accordance with the general Rules, provisions of the Kerala State and Subordinate Service Rules as well as the special rules applicable to each post, and the qualified candidate shall be promoted in accordance with the Rules applicable to it and the resultant vacancy at the lowest cadre, having left vacant in the absence of qualified candidate as per rules to claim promotion in the department, such posts shall be transferred to the Board, with prior permission of the Government, and thereafter the Board will have the power to fill such posts as per the Rules applicable in the Board Service.
(3) The Government shall pay the salaries, allowances, pensions and other service benefits to the employees of the department for which the Government shall make budget allocation of the required sum to the salary head in respect of the employees of the department from the Budget, grant allocated to the Board, every year.
(4) Nothing in sub section (1) shall prevent an employee of the department from exercising option to serve in other departments of
the Government, by protecting their pay and allowances within such period as may be specified by the Government.
(5) The Government may after consulting the board direct by general or special order that the employees who have exercised option within the time specified by the Government under sub section (4) and as specified in the order shall stand allotted to serve in such other departments of Government with effeft from such date as may be specified therein.
(6) With effeft from the date specified in the order under sub section (5) the person specified in such order and allotted to serve in other departments of the Government shall cease to be an employee of the department referred to in sub section (1).
25. Board's control over the Hindu Religious and Charitable Endowment (Administration) Service:- (1) The vanishing category of the HR\&CE (Administration) Department constituted in 1956, shall continue in the Board with the same name, which shall consists of such member of Hindu officers and servants in the remaining posts after transfer of the posts of entry cadre to the Board, on retirement at the highest Cadre and further promotion to the resultant vacancies in the hierarchy of sanctioned posts.
(2) Every full time employee referred to in clause (1) above shall be deemed to be the employee of the Board with same terms and conditions of service, and with the same rights and privileges as if, such employees would have held the same if the Madras Hindu Religious and Charitable Endowments Act, 2008 (Act No. 31 of 2008) had not been enacted, until altered by the Government.
(3) The Commissioner as the head of department shall have the power of control and discipline of the employees as per the Rules applicable to the employees appointed under Chapter VII of the Kerala Service Rules, with the consent of the Board.

## CHAPTER - IV

## OFFICERS AND EMPLOYEES OF THE BOARD

26. The Commissioner and Secretary to the Board and other officers under the Board:- (1) Commissioner and Secretary:- The Commissioner and Secretary to the Board shall be in the scale of pay of Joint Secretary to the Government. The Government shall make appointment to the post from the officers under the Government, having Law graduation.
(2) The Commissioner and Secretary shall be the Chief Executive of the Board who shall implement the decisions of the Board as prescribed.
(3) The Commissioner and Secretary shall be a person professing Hindu Religion and a believer of God and temple worship.
(4) (i) while making appointment to the post referred to in sub section (1) the Government shall have due regard and preference to the claim of qualified officers in the feeder category to the post of Commissioner of the department as per the Special Rules applicable to the post of Commissioner, from the employees referred to in Section 24 (1) of this Act; since the department is continuing as the administrative service of the Board.
(ii) In the absence of qualified candidate as provided in sub section (4) the appointment of the Commissioner and Secretary. shall be as prescribed.
(5) The Board may appoint Deputy Commissioner (Law), Deputy Commissioner (Administration) and Deputy Commissioner (Audit) and such number of Assistant Commissioners as it think fit, with prior approval of the Government for the purpose of exercising powers and performing the functions conferred on or entrusted to
them by or under this Act, by the Board as prescribed without superseeding the seniority of the category of employees referred to in Section 24.

Provided that the number of appointments shall not exceed the sanctioned strength in each cadre as per orders of the Government.
27. The President, and members of the Board and the Commissioner etc; to observe appropriate forms, usages and practices:- The President and members of the Board, the Commissioner, the Deputy Commissioners, the Assistant Commissioners and all other officers exercising powers or performing functions under this Act shall not interfere with the proper observances of the rites and rituals and usages and practices in respect of the religious institution and shall so far as may observe in accordance with the customary and conventional forms appropriate to the religious institution in respect of which such powers are exercised or functions are performed and in the case of a Mutt, and act in conformity with the rules, practices, usages or customs of the Mutt in dealings with the head of the Mutt.
28. Powers and functions of the Commissioner and Secretary, Deputy Commissioners and Assistant Commissioners:- Subject to the provisions of this Act, the Commissioner and Secretary, Deputy Commissioners, Assistant Commissioners and other officers of the Board shall exercise powers and perform such duties as may be conferred or entrusted by the Board from time to time.
29. Appointment of subordinate officers and Servants:- (1) The Board with the previous approval of the Government shall create such number of posts with such designation as necessary in the administrative service of the Board.
(2) The qualification and manner of appointment shall be as prescribed.
(3) Notwithstanding anything contained in this Act the rules made there under relating to the recruitment, and the conditions of service of officers and employees of the Board, all the appointments of officers and employees in the Devaswom Administrative Service of the Board for which direct recruitment and promotion from the temple employees is resorted to shall be made from the select list of candidates belonging to Hindu Religion furnished by the Kerala Devaswom employees recruitment Board constituted by the Government, as prescribed.

Provided that such appointment shall be made without superseding the seniority and qualification of the employees referred to in section 24 (1) of this Act.
(4) The day to day administration of each temple shall be carried ${ }_{\text {\& }}$ out by the Executive Officer appointed by the Board.
(5) The Executive Officers and employees of the temples under the administrative control of the Board shall be deemed to be the employees under the Board in the same designation and in the same temples and shall hold office therein as prescribed.
(6) Notwithstanding anything contained in this Act, the Rules made there under, the Board shall have power to make appointment of such number of Executive Officers as prescribed, from the select list prepared by the Kerala Devaswom Recruitment Board, for which the Board shall group the temples as prescribed and make appointment of the Executive Officers to each sub group devaswoms to carryout the day to day administration of the temples in each sub group as prescribed.

Provided that the number of sub groups shall be limited to such number without exceeding the total number of Grade I and grade II institutions taken together.
30. Constitution of Engineering Wing:- (1) The Board with the previous approval of the Government may constitute an Engineering wing consisted of such number of Engineers, Architects, and sculptors with such designation as the Board may deem necessary, to carryout the duties vested with the Board, and for entrustment of supervision, control and evaluate the quality of the maramath works executed by the Board in the temples.
(2) Notwithstanding anything contained in this Act or in the Rules made there under to the Contrary, the Board shall have power to make appointment of the Engineers and other employees having technical qualifications in the temple service, to the Board by deputation to constitute the Engineering wing initially, as prescribed.
31. Constitution of separate wings for Finance, Law, and verification of Jewels; and valuables, ornaments of gold, silver etc, offered to the deity:-

The Board may constitute the following separate wings for lawful administration of the Board as prescribed with such number of officers and subordinates with the previous approval of the Government.
(a) A Finance wing under an Accounts Officer to deal with the Finance of the Board and its Accounts;
(b) A Law wing under a Law Officer for proper conduct of the cases in the courts in which the Board and the temples under the Board become parties or in which the interest of the Board or the temples under the Act are involved.
(c) A verification and appraisal wing under an officer, not below the rank of an Assistant Commissioner and with such number of verification officers and goldsmiths for verification and appraisal of Jewels and valuables, Gold and Silver ornaments in the temple, decorated with and as well as offered to the deity, as prescribed.
(d) Internal Audit wing:- An internal audit wing under an officer, not below the rank of Deputy Commissioner (Audit) and with such number of Audit Officers and Auditors for periodical audit of the Accounts of the temples, as prescribed.

Provided that the qualified employees referred to in Sec. 24 of this Act, will have preferential claim over all others for appointment to such newly created posts in the above said wings in the Board for the reason that they had been appointed for the purpose of the Act, and continuing in the Board, for the purpose of Act No. 31 of 2008.
32. Constitution of a Vigilance wing:- (1) The Government shall constitute a separate vigilance wing for the Board, under a Police Officer not below the rank of a Deputy Superintendent of police and with such number of subordinate officers, as the Government may deems necessary.
(2) The expenditure for the vigilance wing shall be met from the consolidated funds of the Government of Kerala for the impartial functioning of the wing.
(3) The functioning of the vigilance wing in the Board shall be as prescribed.

## CHAPTER - V

## GENERAL POWERS AND DUTIES OF THE BOARD

33. Vesting of right of administration in the Board:- (1) Subject to the provisions of the Act, the Board shall administer the religious institutions, trusts, endowments attached with the religious institutions, trusts, and Mutts, its properties, movable and immovable and funds for proper conduct of the rites, rituals ceremonies and festivals of the institutions according to usage.
(2) The Board shall do all things reasonable and necessary to ensure that such religious institutions, endowments, properties and trusts are properly administered and supervised and that the income thereof are duly appropriated for the objectives of such institutions, endowments and trusts, in accordance with the purposes for which, it was found or for which it exists, in so far as the objects and purposes can be ascertained.
(3) Without prejudice to the generality of the provisions of this Act, the main Prowers and duties of the Board shall be:
(a) The administration and maintenance and development of the religious institutions, Mutts, trusts and endowments attached therewith its control and supervision, as provided in the Act;
(b) to expedite action for the eviction and recovery of the properties of the religious institutions which were illegally alienated by the trustees and encroached upon;
(c) Fixation of scales of pay and the pay and make payment of salary to all the Executive Officers and employees of the religious institutions and Mutts as prescribed;
(d) to sanction grant for renovation of the temples under the Act, as prescribed;
(e) to prepare and approve annual budget of the Board and furnish a copy to the Government;
(f) to prepare and maintain in the prescribed manner a complete record containing full information regarding all the religious institutions within the purview of the Act, in a phased manner;
(g) to prepare and maintain in the prescribed manner a complete record containing full information relating to the origin, nature, extent of properties, income, objects and beneficiaries of different classes of religious endowments and trusts, within the jurisdiction of the Board;
(h) to prepare and maintain a register containing true copies of all documents creating religious trusts;
(i) to cause timely inspection of the religious institutions, Mutts, trusts, and endowments its properties, movable and immovable, the accounts, and of the endowments attached therewith, as prescribed;
(j) from time to time call for information, reports, returns and other documents from the religious institutions, Mutts, religious endowments and trusts;
(k) give directions for proper administration of religious institutions, Mutts, trusts and endowments attached therewith, in accordance with the law governing such institutions;
(1) to institute whenever it thinks fit, an inquiry relating to the administration of the religious institutions, Mutts trusts and
endowments attached therewith and expedite action, thereon, if required;
(m) to defend any suit or proceedings instituted with respect to a religious institution, Mutt, trust and endowments attached therewith or any matter connected with it;
(n) to cause to audit the Accounts of the religious institutions, Mutts, trusts and endowments attached therewith, annually;
(o) to cause to get the selection lists prepared and candidates allotted, the selected candidates through the Kerala Devaswoms recruitment Board to fill the vacant posts in the Board and in the religious institutions prescribed;
(p) to furnish the Government or such officer the Government may appoint in this behalf, any statement, report, returns or other document and any information which the State Government or the officer authorized in this behalf as the case may be, require to report giving detailed accounts of the activities of the Board and also to furnish the Government an biannual report duly approved by the Board;
(q) to regulate the conditions of service and recruitment of the employees required to the administrative service of the Board as prescribed;
(r) to regulate the conditions of service and recruitment of the employees required to the temple service including the Executive Officers as prescribed;
(4) The Board may delegate any of the powers vested with it, to the Commissioner, Deputy Commissioners or Assistant Commissioners and exercise it, subject to the Bye-laws approved by the Board.
34. Preparation and publication of list of religious institutions, on the basis of income:- The Board shall prepare a list of classification of the religious institution and publish in the prescribed manner, in three grades ie I, II, \& III in accordance with the actual annual income derived thereat in each temple as decided by the Board from time to time, for fixation of staff strength and scale of pay of the employees to each temple as provided;

Provided that the Board may alter the classification assigned to an institution, in case, the annual income of such institution calculated as aforesaid exceeds or falls below the limits in each grade, as specified in three consecutive years.

## 35. Power of the Board to decide the jurisdiction of the endowments:-

Where a specific endowment is situated in two or more divisions, the Board shall decide as to which of the Deputy Commissioners or Assistant Commissioners shall exercise the powers or perform the functions in respect of such endowment.
36. The Powers of the officers under the Board to enter into the religious institutions:- (1) The Commissioner, Deputy Commissioners or Assistant Commissioners having jurisdiction or any other person authorized by the Board or Commissioner, Deputy Commissioners or Assistant Commissioners in that behalf shall have power to enter into the religious institution or any place of worship for the purpose of exercising any power conferred or discharging any duty imposed on such officers by this Act or the Rules made there under.
(2) If any such officer or servant is prevented in the exercise of such power or discharge of such duty, the $1^{\text {st }}$ class Magistrate having jurisdiction shall on a written requisition from such officer or servant, direct any police officer not below the rank of a Sub

Inspector to render such help as may be necessary to enable the officer or servant to exercise such power or discharge such duty.
(3) In entering the premises or into the religious institution or place of worship, the person authorized by, or under Sub. Section (1) or police officer referred to in sub section (2) shall as far as practicable, give notice to the executive officer and shall have due regard to the practices and usages of the institution.
37. Power of the Board to Borrow:- (1) The Board may from time to time, with the previous sanction of the Government, and subject to such conditions and limitations as the Government may impose, borrow any sum, for investment by the Board in any remunerative project or scheme undertaken or to be undertaken by it.
(2) The income derived from any such project or remunerative scheme, implemented wholly or partly, with any sum borrowed under sub. section (1), shall be utilized only for repayment of the loan and payment of interest thereon and for the purpose of performing the functions which the Board is required to perform.
(3) The Government may on requisition from the Board, through a resolution passed by it, constitute a financial agency, namely Malabar Devaswom Development Finance Corporation, by an Act, for the exclusive purpose of creation of viable commercial and immovable assets in the landed propertics owned by the temples, by utilizing the movable and immovable properties of the religious institutions.

## 38. The Pay Fixation of the officers and employees :- (1) The Board

 shall have the power to fix and regulate the pay structures of the employees of the administrative service of the Board, the Executive Officers and the employees of the religious institutions from time to time.(2) Rights, if any, deemed to have been accrued to any category of employees with regard to any revised scales of pay or revision of the scales of pay prior to the commencement of this Act will, cease to have any effect from the date of commencement of this Act, and the decisions of the Board, shall prevail, in such matters.
39. Gratuities and Provident Fund etc:- (1) The Board may formulate schemes with approval of the Government, to maintain funds such as Provident Fund, Gratuities, Pension, Group Insurance etc for the employees of the administrative service of the Board, the Executive Officers, and employees of the temples at a specially convened meeting for the purpose or by a resolution in the Board, in favour of which not less than twothird of the members present in such meeting shall have voted.
(2) The Board may subject to the approval of the State Government, make Rules for:
(a) granting of gratuity;
(b) Formulation of scheme, and management of Provident Fund, Pension Fund etc with the mandatory provision for contribution thereto by the officers and servants of the Board and religious institutions;
(c) maintenance of group insurance Scheme and Life Insurance Scheme; and
(d) Pension scheme by constitution of a Penssion Fund.
(3) The Malabar Devaswom Executive Officers and Temple Employees Welfare Fund scheme and the fund existing therein on the commencement of a new pension scheme as per clause (1) above, shall be merged to with the Pension Fund created newly by the Board, along with the rights and liabilities of the existing members.
40. Preservation of temple tanks and sacred grove of trees:- The Board shall maintain temple tanks in good condition by renovating it with timely repairs with financial assistance from the Government as well as by channeling the funds from voluntary agencies as well as the local self government institutions for the purpose in the prescribed manner. The sacred groves connected with a place of worship or an institution shall be protected and preserved and the provisions of the Kerala Preservation of Trees Act, 1980 shall be applicable to such groves.

Provided that the Government shall issue a notification by including all the sacred forests, used as a place of worship, or attached with a religious institution under the Act, within the meaning of Sec. 5 of Kerala Preservation of Trees Act 1980, and within one year after the commencement of this Act and after such notification, the provisions of the Act shall apply to the sacred groves of trees as if it were reserved forests.

## CHAPTER - VI

## POWERS AND DUTIES OF THE GOVERNMENT

41. Grants by the Government:- (1) The Government shall after due appropriation in the annual budget by the state Legislative Assembly by law in that behalf, pay to the Board, every year such sums of money as the Government, may think fit, to the Malabar Devaswom Board Fund as;
(i) annual budget grant to the Board; and
(ii) Budget allocation to the employees of the HR\&CE Service as provided in $\operatorname{Sec} 24$ (3) of this Act.
42. Power of the Government to review the working of the Board:- (1) The Government Shall have power to review the General working of the Board every six months basing on the report of the Board and
such other relevant matters and may issue such directions to the Board as may be deemed necessary and such direction shall, as far as reasonably be complied with by the Board, promptly, and submit a report to that effect to the Government, and in case of failure without sufficient excuse will be a reason for initiating proceedings to dissolve or supersede the Board.
(2) In the event of the Board was dissolved or superseded under sub-section (1) above or all the members ceased to hold office by reason of disqualification in or resignation etc, the Government may by notification in the Gazette, appoint an officer not below the rank of the Principal Secretary to Government, who is professing Hindu religion as the Chief Commissioner to exercise such powers and perform such duties of the Board, as may be specified in the notification till the new members of the newly Constituted Board assume office.
43. . Appointment of a Commission:- (1) Notwithstanding anything contained in this Act, the Government may by notification in the Gazette appoint a Commission to report on the allegations of irregularities, maladministration or misappropriation of funds by the Board;
(2) The Commission appointed under sub-section (1) shall be a sitting or retired judge of the High Court of Kerala, who is a Hindu, in consultation with the Chief Justice of the High Court of Kerala;
(3) The terms and other conditions of appointment of the Commission shall be such as may be specified in the order of appointment of such commission.
44. The Malabar Devaswom Tribunal:- (1) The Government shall constitute a Tribunal namely the Malabar Devaswom Tribunal through an Act, for the special purpose of eviction and recovery of
possession of the landed properties encroached upon and held under illegal alienation, which were owned by the religious institutions or endowments under this Act.
(2) The Presiding judge shall be a district judge of the Kerala Judicial Service.
(3) The expenditure for the functioning of the Tribunal shall be met from the consolidated fund of the State.
(4) The Board shall have power to move before the Tribunal for recovery or eviction of encroachment of any landed properties of any religious institution under it, as prescribed.
(5) The trustee/Chairman or Executive Officer, or by any designated office holder of the religious institution by name whatsoever, or persons having interest not less than five may move the Tribunal for eviction of encroachment and recovery of landed properties of the religious institutions.

## CHAPTER - VII

## POWERS OF INQUIRY, SUITS AND APPEALS

45. The Deputy Commissioner to decide certain disputes and matters:-
(1) The Deputy Commissioner (Law), shall have power to enquire into and decide any of the following disputes as to the question with regard to the religious institutions and properties and endowments attached, within the purview of this Act and as well as those if not within the purview of this Act, but situated within the area of jurisdiction of the Board, after hearing all the parties concerned as prescribed:
(a) whether any institution or endowment is a religious institution or endowment as defined in this Act, and whether it can be declared so;
(b) whether any property is an endowment and if so, whether it is a religious endowment or charitable endowment as defined in this Act, and whether it can be declared so;
(c) whether an institution or endowment is a charitable institution or charitable endowment as defined in this Act, and whether it can be declared so;
(d) whether any property is a specific endowment as defined in this Act and whether it can be declared so;
(e) whether any property or money which has been given for the support of an institution is an endowment or not.
(2) The final order issued under sub section (1) above shall be published in the district Gazette where the institution, endowment or property is situated.
(3) any person aggrieved by the final order of the Deputy Commissioner (Law) under sub section (1) may file appeal to the Board within 60 days from the date of notification of the order.
(4) A suit against the final order of the Board shall lie to the Sub Court, within the area of jurisdiction in which, the religious institution, endowment, or the property is situated.
(5) The Board or the Sub Court may stay the execution of the final order against which the Appeal or suit was filed pending the exercise of powers under sub-section (3) and (4) above.
46. Appropriation of endowments:- (1) The Deputy Commissioner (Law) may on being satisfied that the purpose of a religious institution has, from the beginning been or has subsequently become impossible for realization, hold an inquiry in the prescribed
manner and by order direct that the endowments of the institution be appropriated to all or any of the following purposes for:
(a) the upkeep and maintenance and standardization of government school in the precincts;
(b) the establishment and maintenance of home for widows and destitutes:
(c) the establishment and maintenance of pain and palliative clinics;
(d) the establishment and maintenance of orphanages and home for differently abled children;
(e) as grant in aid to any other religious institutions under the Board, which is poor or in needy circumstances.
(2) Any person aggrieved by the order of the Deputy Commissioner (Law) may appeal to the Board within 60 days from the date of notification of the order.
47. Determination and application of properties and funds of defunct religious institutions:- (1) The Deputy Commissioner (Law) may on being satisfied that a religious institution has, whether before or after the commencement of this Act, ceased to exist, hold an inquiry in the prescribed manner to ascertain its properties and after doing so, shall pass a order:
(a) specifying the properties of the institution;
(b) the manner in which it shall be merged to the Board by removing the trustee from office; if renovation was not possible;
(2) The Deputy Commissioner (Law) may on being satisfied, after holding an inquiry in the prescribed manner that the building or other places which was being used for religious worship or
instruction has whether before or after the commencement of this Act, ceased to be used for that purpose, pass an order:
(a) directing the recovery of such building or place from any person who may be in possession thereof; and
(b) laying down that it shall be used for religious worship or instruction as before; or if such usage is not possible, be utilized for any one or more purposes specified in section 46.
(3) Any party aggrieved by the order of the Deputy Commissioner may file appeal before the Board within 60 days which shall be final.
48. Power of the Commissioner to frame scheme :- (1) when the Commissioner has reason to believe that in the interests of the proper administration of a religious institution a scheme should be settled for the institution either suo-moto for the reason recorded or when not less than five person having interest, make an application in writing, stating that in the interest of the proper administration of religious institution a scheme should be settled for it, the Commissioner shall consult the Board, in the prescribed manner, and if it is satisfied that, it is necessary or desirable to do so, shall by order frame a scheme of administration for the institution.
2) A scheme of administration shall contain the provisions for:
(a) The exclusive peculiarities regarding the religious institution, name of its founder family available if any;
(b) the name of the sub temples attached to the main temple;
(c) name of family or families of hereditary trustees if any;
(d) A schedule of properties in which the religious institution or temple is situated and endowments attached to the temple; .
(e) associating one or a body of persons for the purpose of participating or assisting in the development of the whole or any part of the religious institution or religious endowments or such matters of specific endowment;

Provided that such person or body of persons shall be chosen from the respectable persons having interest in the locality of such religious institution or endowment is situated.
(f) defining the powers and duties of the trustee;
(g) pending the framing of a scheme for a temple or for a specific endowment other than one attached to a Mutt, the Commissioner may appoint an Executive Officer to carryout the day-to-day administration and define powers and duties of the Executive Officer.
(3) The Commissioner may at any time or on recommendation of the Board, by order modify or cancel any scheme settled under sub-section (1).
(4) Every order of the Commissioner settling, modifying or canceling a scheme, under this section shall be published in the District Gazette and on such publication, the order shall be binding on the trustee, the Executive Officer and the persons having interest.
(5) The powers conferred by this section in respect of Mutt shall be exercised by the Board.
(6) An appeal shall lie to the Board, within two months from the date of order issued by the Commissioner, or date of Gazette in which the order was published.
(7) In the case of scheme under Sub Section (5) above, appeal shall lie to the Government in the same manner as provided in Sub Section 6 above.
49. Assumption of management in certain cases:- (1) The Board may assume the management of any private temple, religious institution, endowment or trust as prescribed in the circumstance mentioned below:
(a) On the application of majority of the trustees or where there are two trustees of any one of them is willing for such assumption, and in cases where the founders have reserved to themselves the power of appointing and dismissing themselves, and of majority of such founders are willing for such assumption or where there are two founders and any one of them is willing for such assumption;
(b) on the refusal of not less than half the number of trustees to accept or to continue in the trusteeship or on their admission of incapacity to continue as trustee;
(c) where the Board has already taken part in the management by the appointment of trustees, certain officers or servants according to the existing usages and if the person in management has failed in carrying out the duties properly and in the best interest of the institution;
(d) where the Board has succeeded to the right of management in part by reason of escheat and if the remaining trustees have failed in carrying out their
duties properly and in the best interest of the institution; and
(e) where there is proved mismanagement and maladministration of any religious institution trust or endowment although the institution do not fall under clauses (c) and (d) of this section.

Explanation: The word donors include the legal representatives of the donors.
(2) Any person aggrieved by an order of assumption passed on any of the grounds under sub section (1) of this section may, within a period of 60 days from the date of publication of the order of assumption in the District Gazette, institute a suit in the District Court, within whose jurisdiction the subject matter situate, to set aside the order.

Provided that subject to the result of such a suit if any, the order of assumption shall become final.
(3) The District Court will have no power to stay the order under challenge in the suit.
50. Enquiry prior to Assumption:- (1) Before assumption of the management of any institution under this Act, the Board shall require the Deputy Commissioner (Law) to inquire into the affairs of such institution and to submit a detailed report after hearing the parties affected or interested, along with the connected file of inquiry, and if the Board is satisfied that, it should for the protection and conservation of religious institution, endowment or trust, assume the management of it, it may pass an order of assumption of management of such institution. Such order shall be duly published in the official District Gazette and shall take effect from such date as the Board may fix, and such order shall be
executed by the Commissioner within the time frame as the Board may decide.
(2) The Board may appoint an Executive Officer to carry out the administration of the institution assumed under sub section (1).
51. Power to issue supplementary orders: (1) where an order has been passed under section 50(1) the Commissioner may pass such other or further orders as may be deemed necessary incidental or conductive to carry out the orders of the Board, for assumption, including orders for search or seizure of the keys, jewels and other valuables, vessels, records and other properties, movable or immovable, belonging to the institution or for the transfer of their possession to such person or persons as the Commissioner may direct.
(2) If the trustee or servant of the institution or any other person knowing that an order under $\operatorname{Sec} 50(1)$ and sub section (1) above is subsisting and knowingly disobeys the direction contained in such order or otherwise fails to comply with the requirements of the said order; or obstructs in any manner, the compliance of such orders within the period prescribed and if such period is not prescribed, within one month positively the trustee, servant or such other person shall be deemed to have committed an offence under sec. 188 of Indian Penal Code and such person shall be prosecuted therefore.
(3) If at any time the Board is satisfied that in the interests of the institution, for the reason recorded in writing, it seems expedient for the Board, to restore the management of an institution assumed under Sec. 50(1), the Board may restore the management of the institution to the original trustees or founders and may lay down such conditions as it may deem fit for proper management of the institution after such restoration.

Provided that, the money recoverable by the Board from the institution on account of loan advanced or money spent during the period of assumed management, shall be remitted to the Board fund before the restoration of the management of the institution, by the person or body of persons, to whom the management has been restored.
52. Appeal to the Board:- (1) Any person aggrieved by any order passed by the Deputy Commissioner (Law) under any of the forgoing provisions of this Act may within two months from the date of publication of the order or the receipt thereof by the party concerned, as the case may be, appeal to the Board.
(2) The Board may on such appeal, against which no suit has been instituted in the Court within the time specified in the sections concerned, may modify, cancel or remit back for reconsideration to the Deputy Commissioner or Commissioner as the case may be within the time frame specified.
53. Power of the Board to call for records and pass orders:- (1) The - Board may call for and examine the record of the Commissioner any Deputy Commissioners, Assistant Commissioners in respect of any proceeding under this Act (not being a proceeding in respect of which a suit or an appeal to a court is provided for by this Act) to satisfy as to the regularity of such proceedings, or the correctness, legality or propriety of any decision or order passed therein.
2. (a) If any such decision or order has been passed by the Commissioner any Deputy Commissioners, Assistant Commissioners, it appears to the Board, that the decision or order should be modified, annulled reversed or remitted back for reconsideration, the Board may after due inquiry consider the matter in the meeting of the Board for a decision and pass orders accordingly;
(b) the Board if it thinks fit, remit the matter together with observation in regard thereto to the Commissioner, Deputy Commissioners, Assistant Commissioners, for reconsideration of the decision or order and report to the Board, within a time limit as specified in this behalf;
(c) On receipt of, and after considering such report it shall be open to the Board, to modify annul or reverse the decision or order, or the decision or order as revised after such reconsideration, as the case may be;
(d) If the report is not received to the Board, within the time specified or such further time as may be granted, the Board may consider the matter and may modify, annul or reverse the decision or order of the Commissioner, Deputy Commissioners, Assistant Commissioners as the case may be.
(3.) The Board shall not pass any order prejudicial to any party, under clause (a), (b) or (c) or (d) of sub section (2) without hearing the party or giving such party a reasonable opportunity of being heard.
(4) The Board may stay the execution of any decision or order referred to in sub section (1) pending the exercise of powers under sub section (2), or (3) in respect thereof.
(5) Any party aggrieved by the order of the Board may file suit before the District Court within two months from the date of receipt of order, by the party.

## 54. Powers of the Commissioner in relation to the Deputy Commissioners,

 and Assistant Commissioners as delegated by the Board:- (1) The Commissioner on a decision of the Board shall have power at any stage:(a) to transfer any proceedings pending before a Deputy Commissioners, Assistant Commissioners to the Commissioners file and dispose of it; or
(b) to transfer it to another Deputy Commissioner or Assistant Commissioner for disposal as decided by the Board.
(2) If the Commissioner is satisfied that any of the Deputy Commissioners or the Assistant Commissioners has failed to exercise any power or discharge any duty which the officer ought to have exercised or discharged, the Commissioner may place the matter before the Board for a decision, along with the report of the Commissioner, thereon, and issue orders in accordance with the decision of the Board.
(3) Notwithstanding anything contained in this Act, where the office of a Deputy Commissioner or Assistant Commissioner is vacant, the Commissioner may if the Board decide thereon, until the vacancy is filled up:
(a) exercise the powers and discharge the duties assigned by or under this Act;
(b) authorize another Deputy Commissioner or Assistant Commissioner to exercise the said powers and discharge the duties.

Provided that the exercise of the power as provided under this section shall be only with the prior decision of the Board.
(4) Any party aggrieved by an order in any matter as provided, not being an order against which suit or an appeal to a court is provided in this Act, may file revision petition before the Government within two months from the date of receipt of the order by the party aggrieved.

Provided that the Government shall not take any decision prejudicial to any party without affording an opportunity for being heard.
(5) The Government shall have power to stay the operation of the order, pending disposal of the Revision Petition.

## CHAPTER - VIII <br> RELIGIOUS INSTITUTIONS

## General Provisions

55. Powers and duties of the President, members of the Board, officers and servants as well, in respect of religious institutions:- Subject to the provisions of this Act, the administration of all religious institutions and endowments attached thereto shall be subject to the general superintendence and control of the Board, and such superintendence and control shall include the power to pass any orders which may be deemed necessary to ensure that such religious institutions, and endowments are properly administered and that their income allocated by the Board are duly appropriated for the purposes for which they were founded or exist.
56. Power to enter religious institutions:- (1) The President and Members of the Board, the Commissioner, Deputy Commissioners, Assistant Commissioners officers under the Board, officers or servants of the religious institutions as may be authorized by the Commissioner, Deputy Commissioners and Assistant Commissioners in this behalf shall have power to enter the premises of any religious institution or any place of worship for the purposes of exercising any power conferred or discharging any duty imposed by or under this Act:
(2) If the President or any Member of the Board or officer or servant has been resisted in the exercise of such power or discharge of such duty, the Executive Magistrate of the district in which the religious institution or endowment is situated shall, on a written requisition from the President or such member, officer or servant direct any police officer not below the rank of Circle Inspector to render such assistance as may be necessary to enable the President or any Member of the Board, officer or servant to exercise such power or discharge such duty.
(3) In entering the premises of a religious institution or place of worship, the person authorized under sub section (2) or the police officer referred to in sub section (2) shall if practicable, give notice to the trustee and shall have due regard to the practices and usages of the institution.
57. The President and Members of the Board, Commissioner, etc to observe appropriate forms and ceremonies:- The President and the Members of the Board, the Commissioner, Deputy Commissioners, Assistant Commissioners and every other person exercising powers of superintendence and control under this Act, shall so far as may observe forms and ceremonies appropriate to the religious institution in respect of which such powers are exercised and in case of a Mutt, act in conformity with the usages of a Mutt, and in the dealings with the head of the Mutt.
58. Sections 59 to 73 not to apply to Mutts or specific endowments attached to Mutts:- The provisions of section 59 to 73 shall not apply to Mutts and specific endowments attached to Mutt.
59. Trustees to be Hindus and within certain limits of age:- No person shall succeed or be appointed to or hold office of the trustee of a religious institution:
(a) unless such person professes Hindu religion; and
(b) unless such person is not less than twenty five and more than 70 years of age.
60. Each Religious Institution is distinct and having separate entity:Notwithstanding anything contained in this Act or in the Rules to the contrary, every institution as per the schedule III in this Act, is distinct and having separate entity even though there are two or more temples deemingly as one group under the same trustee for the purpose of administration except administration of funds.
61. Trustees to administer religious affairs in accordance with usage:-
(1) subject to the provisions of any law for the time being in force, the trustee of every religious institution shall administer its religious affairs in accordance with the established usage and custom of the institution and to apply the funds allocated by the Board and property of such institution in accordance with the terms of the trust, the usages of the institution and with compliance to all the lawful directions which the Board may issue in respect thereof, and as carefully judicially and transparently as a man of ordinary prudence would deal with such affairs, funds and properties, if they were his or her own.
(2) The trustee shall be entitled to exercise all powers incidental to the prudent and beneficial management of the religious affairs of the institution and do all things necessary for due performance of the duties imposed on the trustee.
62. Power of the Board to appoint trustees:- (1) The Board shall have power to appoint five non-hereditary trustees to each temple for proper representation of the devotees at large, in the administration of religious affairs of the institution, along with the hereditary trustees, as prescribed.
(2) Every non-hereditary trustee appointed under sub section (1) shall hold office for a term of five years, unless in the meanwhile the trustee is removed or dismissed or resignation is accepted by the Board or otherwise ceases to be a trustee.
(3) where a vacancy occurs in the office of non-hereditary trustee under sub section (2), the Board shall not fill up the vacancy, unless for the reasons to be recorded, considers it necessary to do so. A non-hereditary trustee appointed in the vacancy shall hold office so long as the member, in whose place such trustee was appointed would have held office, had such vacancy not occurred.
(4) (a) Any person aggrieved by the order of the Board, in appointing non-hereditary trustees, under sub section (1) and (3) may within 30 days of the receipt of the order, file an application to the Sub Court having jurisdiction to set aside or modify or cancel such order.
(b) The court shall have no power to stay the order pending disposal of the suit.
63. Assumption of charge of the Office of the non hereditary trustee:- (1) In a religious institution for which a Board of trustees is constituted under Sec. 62(1), the Board of trustees shall assume charge of the office of the trustee within one month of the order and elect one among them to be its Chairman.
(2) The Executive officer shall convene the meeting of the hereditary and non-hereditary trustees for election of Chairman.
(3) The term of the Chairman shall be five years unless removed, resigned, ceased to be a trustee, or removed by no confidence motion.
(4) The elected Chairman of the Board of trustees can be removed from the office by moving a no-confidence motion in the Board of trustees, and passing of it by a simple majority.
(5) If any non-hereditary trustee is appointed and if not assumed charge within the time specified in sub section (1) above, the order as far as that person is concerned will cease to have any effect and deemed to be kept in abeyance.
64. Claims of certain persons to be non hereditary trustees:- (1) In making appointment of trustees under Sec. 62, the Board shall have due regard to the claims of certain persons belonging to religious denomination for whose benefit, the institution concerned is chiefly maintained.

Explanation:- Continued appointment of non-hereditary trustees from a given class will not confer the status of any denominational interest in the absence any valid recordical evidences.
(2) The Board will have the discretion to make appointment of suitable qualified persons as trustees from the applications received from the religious denomination on notification as prescribed in the Rules $\mathrm{u} / \mathrm{s} 62$.
65. Power to suspend, remove or dismiss trustees:- (1) The Board may suspend, remove or dismiss any hereditary or non-hereditary trustee or trustees of any religious institution under the Act:
(a) for persistent default in the submission of budgets, accounts reports or returns; or
(b) for willful disobedience of any lawful order issued under the provisions of the Act by the Board, Commissioner, Deputy Commissioner or Assistant Commissioner; or
(c) for any malfeasance, misfeasance, breach of trust or neglect of duty in respect of the institutions and trust; or
(d) for any misappropriation or improper dealing with, the properties of the institution; or
(e) for unsoundness of mind or other mental or physical defect or infirmity which unfits for discharging the functions of the trustee.
(2) when it is proposed to take action under sub section (1);
(a) the Board may authorize the Commissioner or Deputy Commissioner (Law) to frame charges against the trustee concerned and by affording an opportunity of meeting such charges, of testing evidences if any adduced for and against such trustees, and after due inquiry as prescribed may furnish to the Board along with report of findings thereon; with the reasons therefore.
(b) Pending the disposal of the charges the Board may authorize the Commissioner or Deputy Commissioner (Law) to place the trustee under suspension and to appoint a fit person to discharge the functions of the trustee.
(3) It shall be open to the Commissioner or Deputy Commissioner (Law) to move the Board to take action under sub section (1) based on the, findings on inspection of records of administration of religious affairs of the temple, or endowments attached therewith.
(4) The person aggrieved by the order of the Commissioner or Deputy Commissioner (Law) may file appeal before the Board within two months to set-aside the order.
(5) A trustee who is removed or dismissed under sub section (1) may within one month from the date of receipt of the final order of removal or dismissal may file a Revision Petition before the Government.
66. Disqualification of the trustees:- (1) A non-hereditary trustee shall cease to hold office if such trustee:
(a) is sentenced by a Criminal Court to imprisonment for a period not less than six months;
(b) applies to be adjudicated or adjudicated as insolvent;
(c) if not residing permanently within the Taluk in which the religious institution is situated;
(d) office bearers of all the national or regional political parties;
(e) Busy professionals;
(f) members of the local self Government Institutions, State Legislature and the Parliament.
(2) In cases of doubt or dispute, the Deputy Commissioner (Law) shall determine whether a trustee is disqualified under sub section (1) or not.
(3) If a hereditary trustee becomes subject to any of the disqualifications described in sub section. (1), the Deputy Commissioner (Law) may supersede the trustee.
(4) Any person affected by an order of the Deputy Commissioner (Law) under sub section (2) or (3) may within one month from the
date of receipt of the order by the person appeal against the order, to the Board.
67. Filling up of vacancies of the office of Hereditary Trustee:- (1) when a permanent vacancy occurs due to death, expiry of 70 years, removal or dismissal, in the office of the hereditary trustee of a religious institution, the next in the line of succession below the age of 70 years shall be entitled to succeed to the office.
(2) when a temporary vacancy occurs in such an office by reason of suspension under Sec. 60 sub section (3) or by supersession under sub section (3) of Section 61, the next in the line of succession who is below 70 years age shall be entitled to succeed and discharge the functions of the trustee until the disability of the trustee ceases.
(3) when a permanent or temporary vacancy occurs in such an office and there is a dispute in respect of the right of succession to the office of the hereditary trustee, or
when such vacancy cannot be filled up immediately or when a hereditary trustee is a minor and has no guardian fit and willing to act as such, or there is a dispute respecting the person who is entitled to act as guardian or,
when a hereditary trustee is by reason of unsoundness of mind or other mental or physical defect or infirmity unfit for discharging the functions of the trustee,

The Deputy Commissioner (Law) may appoint a fit person to discharge the functions of the trustee of the institution until the disability of the hereditary trustee ceases or another hereditary trustee succeeds to the office or for such shorter term as the Deputy Commissioner (Law) may direct.

Provided that the succession of the hereditary trustee under sub section (1) shall be duly approved by the Deputy Commissioner (Law).
(4). Any person affected by an order of the Deputy Commissioner (Law) under sub section (3) may within one month from the date of receipt of the order, may appeal against the order to the Board.
68. Powers to pass supplementary orders:- (1) Where an order for the supersession or removal of a trustee or of the appointment of a new trustee has been made under sec. 60 or 61 or 62 as the case may be the Board may pass such other or further orders as it may deem necessary for giving effect to the order.
(2) Without prejudice to the generality of the provisions contained in sub section (1) the Board may pass such orders for the search or seizure of the keys, jewels, vessels, furniture, records, and nther properties, movable or immovable, belonging to the said institution or for the transfer of their possession to such sperson or persons as it may direct.
69. Abolition of hereditary rights of Archakas and other office holders and servants:- (1) (a) Notwithstanding any compromise or agreement entered into, or provisions of the scheme to the contrary or any judgment, decree or order passed by any court of law, Tribunal or any other authorities prior to the commencement of this Act, all the hereditary rights contractual or otherwise in respect of a family or a person, to any office of the Archakas such as santhi, poojari, etc, kazhakam, sweeper, or any other office or service or post by whatever designation it is known, in any religious institution or endowment shall on the commencement of this Act shall stand abolished.
(b) Any usage or practice relating to the succession to any such office or service or post mentioned in clause 1 (a) shall be void.
(c) All rights to emoluments of any nature in cash or in kind or both accrued to and pertaining to any office or service or post mentioned in Clause (a) and in force on the date of commencement of this Act shall on such commencement stand extinguished.

Provided that the conditions of service with regard to the retirement age of such approved hereditary employees and office holders will be the same as applicable to non-hereditary employees.

Provided also that the hereditary employees or office holders as referred to in Clause 1 (a), who are in service on the date of commencement of this Act; shall continue till their death, or relinquishment or infirmity as the case may be.
70. Appointment of office holder and servants of Religious Institutions:-
(1) The Board shall have power to fix the staff strength in each temple, whether it is permanent or temporary.
(2) The approved posts, the pay, scale of pay and emoluments of each officer or servant of a religious institution shall be in accordance with the schedule of establishment sanctioned by the Assistant Commissioner, as decided by the board to each temple on the basis of the approved staff strength as provided in sup section (1). The trustee will have no power to alter the schedule without the order of sanction of any new posts or alteration necessitated due to the exigencies of service in the temple, by the Board.
(3) The conditions of service of the employees of the religious institutions shall be as prescribed.
(4) The vacancies whether permanent or temporary shall be filled up by the Board as prescribed.
(5) Notwithstanding anything contained in the Act or Rules there under all the appointments to the vacant posts in the religious institutions, vacancies to the higher posts other than entry posts in the institutions shall be filled up by promotion in accordance with eligibility from the qualified employees in the lower scale of the same grade of temple or in the absence of candidate in the same grade from the lower grade temple, next below as the case may be, subject to merit and seniority as prescribed.

## 71. Control of the office holders and servants of religious institutions:-

(1) Notwithstanding anything contained in the Act or rules to the contrary or whether any emolument or perquisite was accepted from the religious institutions or the Board all office hoiders and servants of the religious institutions shall be under the control and discipline of the Executive Officer. The Executive Officer may after following the prescribed procedure, fine, suspend, remove or dismiss any employee in the religious institution, for breach of trust, incapacity, disobedience of orders,
(2) pending enquiry on the grave charges framed by the Executive Officer, may place an employee of permanent service, under suspension, if found it necessary for the reasons recorded in writing in the interest of the temple as well as the devotee.
(3) any office holder or servant punished by the Executive Officer, under sub section (1) may within one month from the date of receipt of the order appeal against the order tc the Deputy Commissioner (Law).
(4) There shall be second appeal to the Board against the order in the $1^{\text {st }}$ appeal by the Deputy Commissioner (Law) which shall be final.
(5) If the Executive Officer refrain from taking disciplinary action against any employee, for reasons recorded in writing by the Commissioner, who may authorize the Assistant Commissioner of the division under which the institution is situated to initiate disciplinary action against the employee and also against the Executive Officer as the case may be.
72. Power to fix fees for archanais or vazhipadu:- (1) Notwithstanding any thing contained in any decree, usage to the contrary, the board of trustees shall have power for fixation or revision of the fees for performance of archanais, and to implement it after obtaining the sanction from the Board as prescribed.
(2) Notwithstanding anything conlained in any contract, decree, judgment, order or usage to the contrary, right for apportionment of vazhipadu share to the employees as per the vazhipadu schedule by agreement, or usage in force prior to the commencement of this Act, stands extinguished on the date of commencement of this Act.

Explanation:- The priests who are continuing in service without any salary by accepting only vazhipadu share shall be allowed salary in the scale of pay admissible to the grade and in the temples where additional persons were engaged, for due conduct of the vazhipadus at the expenses of the priests, additional posts shall be created by the Board, and appointed as prescribed for proper conduct of the vazhipadus.
(3) Notwithstanding any custom, usage or otherwise, the employees of the religious institutions shall not be eligible or entitled to take, or accept, any money or things placed anywhere in the temple premises, including the 'sopanam' or dedicated or
offered by the devotees, other than salary from the temple and 'dakshina' from the devotees by hand.
73. Fixing standard scales of expenditure:- (1) The trustee of a religious institution may from time to time submit to the Assistant Commissioner proposals for fixing the dittam or scales of expenditure in respect of the institution, and the amounts which is necessary and to be provided for various such objects connected with the rites, rituals and ceremonies of the institution.
(2) The trustee shall publish such proposals at the premises of the institution, as prescribed together with notice stating that within one month from the date of such publication any person having interest may submit objections or suggestions to the Assistant Commissioner, as delegated by the Board.
(3) After the expiry of the said period the Assistant Corrmissioner shall, after considering the objections and suggestions received, submit it to the Board along with the opinion thereon, having regard to the established usage of the institution and its financial position, for approval. After approval a copy of the dittam shall be communicated to the trustee.
(4) The dittam or scale of expenditure for the time being in force in an institution shall not be altered by the trustee except in accordance with the procedure laid down in this Section.

## CHAPTER - IX

## MUTTS AND SPECIFIC ENDOWMENTS ATTACHED TO MUTTS

74. Suit for the removal of a trustee of Mutt or specific endowment attached thereto:- (1) The Commissioner with permission of the Board, or two or more persons having interest obtained the consent of the Board in writing may institute a suit in a District

Court in which the Mutt is situated, to obtain a decree for removing the trustee of a Mutt or a specific endowment attached to a Mutt, for any one or more of the following reasons, namely-
(a) The trustee being of unsound mind; and
(b) being suffering from any physical or mental defects or infirmity which renders him unfit to be a trustee;
(c) having ceased to profess the Hindu religion or the tenets of the Mutt;
(d) conviction for any offence involving moral turpitude;
(e) breach of trust in respect of any of the properties of the religious institution;

Explanation:- Express or implied transfer of any property belonging to the Mutt or entrustment of any property, endowment or temple for administration of it shall be breach of trust.
(f) waste of funds or properties of the institution or the application of such funds or properties for purposes unconnected with the institution;
(g) the adoption of devises to convert the income of the institution or of funds or of properties thereof into 'pathakanika';
(h) leading an immoral life or otherwise leading a life which is likely to bring the office of head of the Mutt into contempt;
(i) Persistent and willful default by him in discharging his duties or functions under this Act or any other law for the time being in force.
(2) Where the Board refuses to give consent under sub section (1) the party aggrieved may, within two months from the date of receipt of the order by the person, prefer a suit before the District Court having jurisdiction, the area in which the Muyt or endowment attached to the Mutt is situated.
75. Filling of vacancies:- (1) When a vacancy occurs in the office of the trustee of a Mutt or specific endowment attached to a Mutt and
there is a dispute regarding the right of succession to such office, or
when such vacancy cannot be filled up immediately; or when the trustee is a minor and has no guardian fit and willing to act as such or there is a dispute in respect of the person who is entitled to act as guardian, or
when a trustee is by reason of unsoundness of mind or other mental or physical defect or infirmity unable to discharge the functions of the trustee, the Assistant Commissioner shall take sưch steps and pass such orders as thinks proper for the temporary custody and protection of the endowments of the Mutt or of the specific endowment as the case may be, and shall report the matter forthwith to the Commissioner, who shall bring it immediately before the Board.
(2) upon receipt of such report, if the Commissioner after making such inquiry as deems necessary, is satisfied that an arrangement for the administration of the Mutt and its endowments or of the specific endowment, as the case may be, is deemed necessary, the Commissioner shall bring it before the Board, and make such arrangements, fit until the disability of the trustee ceases, in accordance with the decision of the Board.
(3) In making such arrangement, the Board shall have due regard to the claims of the disciples of the Mutt, if any
76. Fixing standard scales of expenditure:- (1) The trustee of every Mutt or specific endowment attached to a Mutt, from time to time submit to the Board, proposals for fixing the dittam or scales of expenditure in the institution and the amounts which should be allotted to the various objects pertaining to the institution or the proportions in which the income or other property of the institution may be applied to such objects.
(2) The trustee shall publish such proposals at the premises of the Mutt and in such other manner or prescribed together with a notice stating that, within one month from the date of such publication, any person having interest may submit suggestions to the Board.
(3) If on scrutiny of such proposals and any suggestions made by persons having interest, it appears to the Commissioner that, the scale of expenditure or any item in the scale of expenditure is at variance with the established usage of the institution, or is not justified by its financial position, the Board may call remarks of the trustee and if after considering the same, the Commissioner has of opinion that any modification is required in the scales of expenditure or any item in the scales of expenditure, he shall submit it before the Board with the opinion thereon, and the Board shall pass orders thereon, and such orders shall be final.
77. Power to spend 'Pathakanika':- The trustee of a Mutt shall keep regular accounts of receipts of 'Pathakanika' that is to say, any gift or properties made to trustee as the head of the Mutt, and shall be entitled to spend the said 'Pathakanika' in accordance with the customs and usage of the institution.

## CHAPTER - X

## NOTIFIED RELIGIOUS INSTITUTIONS

78. Issue of notice to show cause why institution should not be notified:-
(1) Notwithstanding that a religious institution is governed under this Act; where the Board has reason to believe that such institution is being mismanaged and is satisfied that in the interests of its administration, it is necessary to initlate proceedings under this chapter, the Commissioner may under authorisation from the Board by notice in the prescribed manner,
call upon the trustee and all other persons having interest to show cause why such institution should not be notified or to be subjected to the provisions of this chapter.
(2) Such notice shall state the reasons for the action proposed and specify a reasonable time, not being less than one month from the date of the issue of the notice for showing such cause.
(3) The trustee or any person having interest may thereupon prefer any objection as may wish to make to the issue of a notification as proposed.
(4) such objection shall be in writing and shall reach the Commissioner before the expiry of the time specified in the notice aforesaid or within such further time as may be granted by the Commissioner.
79. Consideration of objections if any and notification of institution:-
(1) where no such objection has been received within the time so specified or granted, the Board may decide to declare the religious institution be subject to the provisions of this Chapter and by notification publish the order in the District Gazette, to that effect.
(2) where any such objections have been received within the time so specified or granted, the Commissioner shall hold an inquiry in to the objections in the manner prescribed and place the findings before the Board for a decision whether the institution should be notified to be subject to the provisions of this Chapter, or not.
(3) If the Board decides that the institution should be notified as aforesaid, the Secretary of the Board may issue the order for and on behalf of the Board, and thereupon by notification publish in
the District Gazette, the declaration that the religious institution is to be subjected to the provisions of this Chapter.
(4) Every notification published under this section shall remain in force for a period of five years, and the Board may review the proceedings after a thorough assessment of the administration and development of the temple, during the period of notification, and the Board may by notification cancel the notification or continue from time to time for a further period not exceeding five years at a time as the Board may by notification, in each case think fit to direct.
80. Scheme to lapse on notification:- On publication of the notification, the scheme of administration, if any settled for the religious institution, after the commencement of this Act and all rules, if any framed under such scheme shall cease to apply to the institution and such scheme and Rules shall not be deemed to be revived by reason of the cancellation of the notification or by reason of its having ceased to be in force by efflux of time.
81. The trustee will be in suspended animation:- On the publication of notification the Board of trustees consisted of hereditary as well as the non-hereditary trustee, if any shall be held under suspended animation, and hence there will not be a trustee during the peridd when the notification is in force.

Explanation:-But there will have no prohibition for the persons who have been performing the rites and rituals connected with the ceremonies and festivals, as hereditary trustees. In dase of refusal if any to perform the rites and rituals, the Executive Officer will have the discretion to act as fit person.
82. Appointment of Executive Officer:- For every institution nofified under this Chapter, the Board shall, as soon as may appdint a
salaried Executive Officer competent to deal with the administration of the institution.
83. Term and duties of the Executive Officer:- (1) The Executive Officer shall hold office for such period as may be fixed by the Board and exercise such powers and perform such duties as my be assigned by the Board.
(2) The Board shall define the powers and duties of the Executive Officer.

Provided that only such powers and duties as appertain to the administration of the endowments of the religious institution shall also be assigned to the Executive Officer.
84. Savings:- Nothing in this Chapter shall apply to Mutt and endowments attached to Mutt.

## CHAPTER - XI <br> FUNDS, ACCOUNTS AND AUDIT OF THE BOARD

85. Funds of the Board:- (1) Subject to the provisions of this Act, the Board shall constitute a fund namely the "Malabar Devaswom Fund".
(2) The Board shall account the following items of receipts under the respective heads of accounts:
(a) Income of all the religious institutions, from all sources under the Board;
(b) Annual Budget grant and loans received from the government from the due share of the income derived of from vested Forest Land of various Lands vested with Government;
(c) $10 \%$ of the annual gross income from Guruvayur Devaswom;
(d) grants and donations received from the public bodies and institutions;
(e) Profits and interest received form investments of Funds of the Board;
(f) all other money belonging to or other income received by the Board; and
(g) the money realised from time to time by the sale of movable and immovable properties belonging to the Board.
(3) The investment of the funds of the Board in the Bank shall be as prescribed.
86. Audit:- (1) The Board shall keep regular accounts of all receipts and disbursements of the Board as prescribed.
(2) The Accounts of the Board shall be audited annually.
(3) The Audit shall be conducted by the Accountant General of Kerala.
(4) It shall be the duty of the officers and employees of the Board to furnish the details sought for by the Auditor. Any decision on the part of the responsible officers or employees, without any reasonable cause shall be prosecuted under Sec. 175 of the Indian Penal Code. 1860 (Ac No. 45 of 1860 ) by the Judicial First Class Magistrate's court having jurisdiction over the area where the officer or employee is working.
(5) After completing the audit of every year or for any shorter period or for any serious irregular transactions, as the case may be, the auditor shall send a report to the Board as well as to the Government.
(6) The Government shall after the receipt of the report give such directions to the Board, to remedy the irregularities, if any pointed out by the auditor and report the same to the Government, within thirty days, or such other extended time as may be granted by the Government, on the application by the Board. But the total period of such extension shall not exceed ninety days. However in exceptional cases the auditor will have the discretion to grant further time for recorded reasons in writing.
(7) If on consideration of the report by the auditor or otherwise, the Government find that the Board or any member thereof was found guilty of misappropriation or willful waste of the funds or of gross neglect resulting in a loss to the Board, the Government shall after giving notice to the Board or to the member concerned to show cause why an order of surcharge should not be passed against the Board or members of the Board, Commissioner and Secretary of the Board and after considering the explanation, if any pass appropriate orders.
(8) If it is found that an employee of the Board has caused any loss to the Board, the Board shall forthwith take action to recover the amount from that employee. If the employee fails to make good the loss, the amount shall be recovered under the Revenue Recovery Act for the time being in force, as if the amount due of is arrears public revenue due on land.
(9) An order of surcharge may be executed against any member or officer of the Board as if it were arrears of public revenue due on land under the Revenue Recovery Act.
87. The Devaswom surplus fund and its administration:- (1) The unspent balance of each year out of the Malabar Devaswoms Fund constituted under Section 85, and such portion of it as may be determined by the Devaswom Board shall be added on to the
${ }^{4}$ Devaswom surplus fund. The Devaswom surplus fund shall be administered by the Board, as prescribed.
(2) Subject to the rules as my be prescribed in this behalf the Board shall have power where it becomes necessary for the Board to purchase property movable or immovable with moneys from the Devaswom surplus fund, creation of assets such as commercial buildings, Convention Centers, Halls in the properties owned by the religious institutions under the Board and do all other acts incidental to the management of such property.
(3) The Board may make Rules prescribing the restrictions, limitations and conditions subject to which assignments of property on lease could be made.

## CHAPTER - XII

## BUDGET, ACCOUNTS AND AUDIT OF THE RELIGIOUS INSTITUTIONS

88. Budget of religious institutions:- (1) The Executive Officer of every religious institution shall before the end of December in each year, submit in such form as prescribed in the Rules, a budget showing the probable receipts and disbursement of the institution duly approved by the trustee required for the next financial year to the Board.
(2) Every such budget shall make adequate provision for-
(a) the dittam or the scales of expenditure for the time being in force;
(b) the due discharge of the liabilities binding on the institution;
(c) the repair and renovation of the building owned by the institution;
(d) the payment of salary of the employees of the institutions;
(e) the maintenance of working balance.
(3) The budget shall be in the prescribed manner and the Board after giving notice to the Executive Officer in the prescribed manner and after considering representation if any, make such alternations, omissions or additions in the budget as the authorities may deems fit.

Provided that the, Budget shall be passed or returned with such lawful directions within two months from the date of receipt of it at the office of the authorities under this Act.
(4) Any expenditure incurred in the temple without adequate provisions in the approved budget shall be unauthorised, and the trustee or trustees and Executive Officer together shall be liablc for such unauthorised expenditure.
89. Accounts and Audit:- (1) The Executive Officer of every religious institution shall keep updated regular accounts of all receipts and disbursements, as prescribed, duly approved by the trustee or board of trustees.
(2). The accounts of every religious institution, the annual income of which is not less than fifty lakhs, shall be subject to audit, by the audit wing of the Board, every month.
(3) The accounts of every other religious institution shall be audited annually, or if the Board so directs in any case or class of cases, at shorter intervals.
(4) The auditor shall be deemed to be public servants within the meaning of Sec. 21 of the Indian Penal Code.
90. Authority to whom audit report is to be submitted:- After completing the audit, for any year or for any shorter period, or for any transaction or series of transactions as the case may be, the auditor shall send a report-
(a) to the Board, if the annual income of the institution is not less than 50 lakhs; and
(b) to the Deputy Commissioner (Audit) in other cases.
91. Contents of Audit report:- (1) The Auditor shall specify in the audit report, all cases of irregular, illegal or improper expenditure or of failure to recover moneys or other property due to the religious institution, or of loss or waste of money or property thereof, caused by neglect or misappropriation.
(2) The auditor shall also report on such other matter relating to the account as may be prescribed, or on which the Board, the Commissioner or the Assistant Commissioner as the case may require to report.
92. Rectification of defects disclosed in audit and order of surcharge against, trustee, etc:- . (1) 'The Commissioner or the Deputy Commissioner (Audit) as the case may be, shall send a copy of every audit report relating to the accounts of a religious institution to the Executive Officer thereof and it shall be the duty of the Executive Officer to bring it before the trustee or Board of trustees and rectify any defects or irregularities, pointed out by the auditor and furnish an action taken report to the Board or the Deputy Commissioner (Audit), as the case may be.
(2) The Deputy Commissioner (Audit) shall forward to the Board a copy of every audit report received by it under clause (b) of \$ec. 90 and report if any of the trustee made under section (1) together with such remarks the Deputy Commissioner (Audit) may make thereon.
(3) If on consideration of the report of the auditor along with the report, if any, of the trustee and the remarks if any, of the Deputy Commissioner (Audit) or the Commissioner, the Board thinks that the trustee or Executive officer or any other person was found guilty or misappropriation or willful waste of the funds of the institution or of gross neglect resulting in a loss to the institution, the Board may after giving notice to the trustee or such person to show cause why an order of surcharge, should not be passed against the person and after considering the explanation of such person, if any, by order, certify the amount so lost and direct the trustee or Executive Officer or such other person to pay within a specified time, such amount personally and not from the funds of the religious institution.

Provided that, if in respect of any expenditure or dealing with trust property, the trustee or such person had obtained the written directions of the Assistant Commissioner or the Commissioner and had acted in accordance with such directions, such person shall not be held responsible.
(4) If any amount was found to be recovered from the person held to be responsible, and if such sum was not remitted or recovered from the person liable, it shall be recovered as an arrear of land revenue, for which a notice of remittance shall be issued to the person liable to make good the amount held under objection.
(5) The Board shall forward a copy of the order under sub section (4) with the reasons for the same, by registered post to the trustee or person concerned.
(6) The trustee or other person aggrieved by such order may within thirty days of receipt of the order may, either-
(a) : apply to the District Court having jurisdiction to modify or set aside the order and the Court after
taking such evidence, as is necessary, may confirm, modify or remit the surcharge with orders as to costs as it may think appropriate in the circumstance;
(b) the Court shall have power to stay the operation of the order pending the disposal of the suit.
(7) An order of surcharge under this section against a trustee or Executive Officer, shall not bar a suit for accounts against such person except in respect of the matter finally dealt with by such orders.
(8) : The Collector of the District in which is situated any property of the trustee or other person from when an amount is recoverable by way of surcharge shall on a requisition made by the Commissioner recover such amount as if it were an arrear of land revenue and pay the same to the religious institution concerned.

## CHAPTER - XIII

## FINANCE

93. Religious institutions to transfer all the income, derived thereat from all sources to the Board:- (1) The right of administration of all the religious institutions, endowments and specific endowments attached to the temples and Mutts having vested with the Board, all the income derived in the institutions under the Act shall transfer it to the Funds of the Board as specified in Section 85/(1) of this Act and all the expenditure in respect of all those religipus institutions, shall be met from the same fund as prescribed.
2) : The Board shall pay the salaries and allowances, and other beneficial remuneration of the Commissioner, and other emplфyees in the administrative services of the Board, the employees of the religious institutions, Executive Officers who are employed for the
purposes of the Act, expenses for the cost of auditing the accounts of religious institutions, and all other expenses of the Board, as prescribed.

## CHAPTER - XIV

## MISCELLANEOUS

94. Immunity to the officers under the board:- No suit, prosecution or other legal proceedings shall be entertained in any court of law against the Board or any officer or servant of the Board for anything done or intended to be done in good faith in pursuance of this section.
95. Prosecution against misuse of properties, its premises and pricincts of religious institutions:- (1) The religious institution, its premises and precincts shall not be utilised, or misused for any type of training and display, of martial arts, armed activities, amateur or professional, by any organizations or religious outfits.
(2) If any person or any class of persons acts in violation of Sub Sec. (1) above such acts shall be treated as injuring or defiling the place of worship with intent to insult religion and such person or class of persons shall be deemed to have committed an offence under section 295 of Indian Penal Code and shall be liable to be prosecuted therefore.
96. Public officers to furnish copies or extracts from certain documents:All public officers having custody of any record, register, report or other documents relating to a religious institution or any movable or immovable property thereof shall furnish such copies of or extracts from the same as may be required by the Board, Commissioner, Deputy Commissioner or Assistant Commissioner.
97. Putting an Executive Officer in possession of administration of a religious institution:- Where a person has been appointed as

Executive Officer of a religious institution to carry out the administration of a religious institution in accordance with the provisions of this Act and such person is resisted in, or prevented from obtaining the possession of the administration of the religious institution or the records, accounts and properties thereof by any body of persons, a trustee, office holder or servant of the religious institution who has been dismissed or suspended from office or is otherwise not entitled to be in possession or by any person claiming or deriving title from such trustee, official holder or servant, not being a person claiming in good faith to be in possession of his own account or on account of some person not being such trustee, office holder or servant, a Magistrate of the first class in whose jurisdiction such institution or property is situated shall on application by the person so appointed, and on the production of the order of appointment, and where the application is for possession of property; a certificate by the Commissioner in the prescribed form, setting forth that the property in question belongs to the religious institution, direct delivery to the person appointed as aforesaid of the possession of such religious institution, or the records, accounts, money and properties there $\phi f$ as the case may be.

Provided however that before issuing any such certificate in respect of any property, the Commissioner shall give notice to the trustee, officer holder or servant of the religious institution as the case may be, of his intention to issue the certificate and consider the objections, if any, of such trustee, office holder, servant, a person or body of persons.

Provided also that, for the purpose of proceeding under this section, the certificate aforesaid shall be conclusive evidence that the properties of which it relates belong to the religious institution.

Explanation:- A person claiming under an alienation contrary to the provision under Section 100 of this Act shall not be regarded as a person claiming in good faith within the meaning of this section.
98. Cost of Proceedings:- (1) No funds of the religious institution shall be appropriated by the trustee or the Executive Officer, for the costs, charges, and expenses incidental to any suit, appeal or application to a Court under this Act unless, sanction was obtained from the Board.
(2) If any amount was expended without obtaining sanction as provided in clause (1) above, the person who do so shall be personally liable, to make good the loss and remit it to the temple funds.
99. Constitution of Committee:- (1) Where the Board is satisfied that in the interests of the religious institution a Committee of devotees is required for any exclusive purpose of developmental activities, 'making conveniences to the devotees, or for proper conduct of annual or periodical festivals, the Board may direct the Executive Officer to convene a meeting of devotees in the temple premises, and constitute a committee as prescribed.
(2) The term of the Committee shall be one year or completion of the purpose which ever is earlier.
(3) The constitution and functioning of the committee shall be as prescribed.
(4) There shall not be any other Committee by whatever name at a time in an institution for the same or any other purpose.
(5) Any person or body of persons who ever acts in violation of any provisions above shall be deemed to have committed criminal breach of trust under section 405 and such persons or body of
persons shall be prosecuted under Section 406 of the Indian Penal Code.
100. Alineation of immovable property of religious institutions:-
(1) Any exchange, sale, mortgage and lease of any immovable property belonging to or given or endowed for the purposes of any religious institution shall be null and void unless it is sanctioned by the Board as being necessary or beneficial to the religious institution;

Provided that before such sanction is accorded, the particulars relating to the proposed transaction shall be published in such manner as prescribed, inviting objections and suggestions with respect thereto; and all objections and suggestions received from the trustee or other persons having interest shall be duly considered by the Board.

Provided further that if it is satisfied to the Board that owing to any emergency or for some other reason to be specified in the order according sanction, it is not reasonably practicable to follow the procedure prescribed in the foregoing proviso, may dispense with such procedure, by a unanimous decision of the Board, imposing condition, regarding utilisation of the sale proceeds, investment thereof; and in the case of mortgage regarding the discharge of the same within a reasonable short period, to the extend possible.
(2) Every order of the Board under sub section (1) shall be published in the District Gazette of which the immovable property is situated;
(3) Any person aggrieved by an order under sub section (1), may file a suit before the competent Court having jurisdiction, but the court will have no power to stay the order against which the suit was filed.

## CHAPTER - XV

## INSTITUTIONS IN GENERAL

101. Maintenance of other registers in addition to cash book and other connected records, in the religious institutions:- (1) The Executive Officer of every institution shall maintain in such manner as prescribed, registers showing:
(a) Particulars of all immovable and movable properties belonging to or given or endowed for the support or benefit of the institution and all property given or endowed for the performance of any service or charity;
(b) Particulars of all movable properties belonging to the institution with their estimated value;
(c) "Register of Dittam" specifying the quantum of goods required the scales of expenditure for daily pooja, rites and rituals, of the ordinarily and recurring for the periodical festivals, and annual festivals, and the manpower required for each, and by summing up together, the goods and services required and expenditure thereon;
(d) particulars of the all liabilities of the institution;
(e) The sanctioned posts to the institution by the authorities under the Act, the names of all the servants and employees of the institution as approved in the schedule of establishment by the Board, to which salary, emoluments, or perquisitc is attached and the nature, time and conditions of service in each case; and
(f) Service register of all the employees working in the sanctioned posts;
(g) Register of investments;
(h) Register of inventories;
(i) Stock register of stores;
(j) Asset accumulation Register;
(k) Stock Register of receipts of offerings;
(l) Hundial Register; and
(m) Such other registers with particulars as the Board may from time to time fix.
(2) Copies of the aforesaid registers shall be prepared, verified and signed by the Executive Officer and submitted to the Board within such period as may be prescribed in this behalf.
(3) The Board may after making such enquiry as it may consider necessary, by order direct such alterations or additions in the register as may find it necessary.
(4) An approved copy of the Register under Sub. Section 1(a) shall be kept in the office of the Board and another copy shall be returned to the religious institutions for keeping it in the records.
102. Scrutiny of the registers and submission of statements to the Board:-

The Executive Officer of the institution shall scrutinise every year the entries in the register referred to in Section 101 and cause to submit to the Board a verified statement showing the alterations, deletions and additions made therein.
103. Submission of accounts and returns to the Board:- The Executive Officer of every institution shall furnish such accounts and returns, reports or other information relating to the administration
to the Board duly approved by the trustee or Board of trustees, within such time as it may prescribe or require.
104. Submission of Balance sheet to the Board:- (1) The Executive Officer shall prepare an annual balance sheet giving such particulars as will disclose the nature and extent of the income, expenditure, outstandings and savings of the institution and send a signed copy of the same to the Board not later than the last day of the first month of the succeeding financial year;
(2) The Executive Officer shall promptly furnish to the Board, such other information as may be required, arising on an examination of the Balance Sheet.
105. Powers of the Board over the trustee etc:- The Board may impose fine, on any trustee, Executive Officer, office holder or servant of an institution who willfully disobeys any order passed by it, such amount as decided by the Board for each act of disobedience. If the said trustee, office holder or servant fails to carry out the order of imposing fine within a week from the date of receipt of order by the person the Board shall remove the person from the office of the trusteeship, or office or post. The trustee of an institution shall be bound to give effect to the order passed by the Board under this section in respect of an office holder or servant of an institution and any failure on the part of the trustee to give effect to such order shall be deemed disobedience within the meaning of this section.
106. Enforcement of service of charity in certain cases:- (1) Where, a specific endowment attached to a Mutt or temple consist of a charge for performance of charity on property and there is failure in due performance of the Service or Charity, the trustee or Executive Officer of the Mutt or temple concerned may require the person in possession of the property on which the endowment has
a charge to pay the expenses incurred or likely to be incurred in causing the service or charity to be performed otherwise. In default of such person making payment as required, the Deputy Commissioner (Law) may on the application of the trustee or Executive Officer, after giving the person in possession a reasonable opportunity of stating the objections in regard thereto, by order, determine the amount payable to the institution.
(2) Where the person in possession of the property on which the endowment has a charge is not the person responsible in law for the performance of the service or charity or any amount is paid by or recovered from the person in possession, the Deputy Commissioner (Law) may on the application of the person in possession and after giving the person responsible in law a reasonable opportunity of stating objections in regard thereto, by order require the person responsible in law, to pay the person in possession the amount so paid or recovered.
(3) Against an order of the Deputy Commissioner (Law) under sub section (1) or sub section (2), the person affected may within, two months from the date of the receipt of the order by suck person, appeal to the Board.
(4) On application by Executive Officer to the Collector of the District in which the property referred to in sub section (1) is situated or on application by the person in possession to the Collector of the District in which the property is situated or any property of the person responsible in law, as the case may be, the Collector shall recover from the person in possession or the person responsible in law as the case may be, the amount specified in the order of the Deputy Commissioner (Law), as modified by the order of the Commissioner if any, and the expenses of such recovety, as
if it were the arrears of land revenue and pay to the Executive Officer, the amount due from such person.
107. Power of the board over the Executive Officer or trustees of specific endowments attached with mutt or temple:- The trustee or Executive Officer of a specific endowment was appointed for performance of any service or charity connected with a Mutt or temple shall perform such service or charity subject to the general superintendence of the Board and shall obey all lawful order issued by the Board.
108. Public officers to give copies requisitioned by the Board:- All public officers having custody of any record, register report or other document, relating to a religious institution shall furnish such copies or extracts from the same as may be required by the Board.
109. Procedure and powers of inquiries under Chapter VII:- (1) Where the Board, Commissioner or the Deputy Commissioner (Law) makes an inquiry or hears an appeal or Revision Petition thereon, the inquiry shall be made and the appeal and revision petition shall be heard as nearly as may be in accordance with the procedure applicable under the Code of Civil Procedure, 1908 to the trial of suits or the hearing of appeals, as the case may be.
(2) The Provisions of Indian Evidence Act, 1872 and the Indian Oaths Act, 1873 shall apply to such inquiries, appeal and revision petitions.
(3) The Board, Commissioner or Deputy Commissioner (Law) holding such inquiry or hearing such appeals and revision petitions shall be deemed to be a person acting judicially within the meaning of the Judicial Officcrs Protection Act - 1850.
110. Bar of suits in respect of administration or Management of religious institutions etc:- No suit or other legal proceedings in respect of the administration or management of religious institution or any other matter or dispute for determining or deciding for which provision is made in this Act shall be instituted in any court of law, except under, and in conformity with the provisions of this Act.
111. Property of religious institution not to vest under the law of limitation after commencement of this Act:- Nothing contained in any law of limitation for the time being in force shall be deemed to vest in person the property or funds of any religious institution, which had not vested in such person or predecessor in title after the commencement of this Act.
112. Applicability of the Kerala Land Conservancy Act, 1957:- All lands belonging to the Board and the religious institutions shall be deemed to be the property of the Government for the purpose of the Kerala Land Conservancy Act, 1957 (Act. No. 8 of 1958) and all the provisions of that Act shall, so far as they are applicable, apply to such lands.
113. Notifications, orders etc, under the Act not to be questioned in a Court of Law:- Save as otherwise, expressly provided in this Act, n notification, or certificate issued, orders passed, decision made, scheme settled, or other things done under the provisions of this Act by the Board, Commissioner, Deputy Commissioner or Assistant Commissioner shall be liable to be questioned in any Court of Law.
114. Powers of the Board to call for the files and pass orders:-
(1). Notwithstanding anything contained in this Act, the Board shall have power to call for any file or proceeding pending before any of its officers not being the statutory inquiries in which an
appeal to the Board is provided, and dispose of it by itself or transfer it to another officer of the Board for disposal.
(2) Any party aggrieved by an order of the Board under sub section (1) not being an order against which a suit or an appeal to a court is provided under this Act may appeal to the State Government within two months from the date of receipt of the order by the party aggrieved.

Provided that the State Government shall not pass any order prejudicial to any party without giving to such party a reasonable opportunity for being heard.
115. Powers of the Government to call for records and pass orders:- (1) The Government may call for the records of the Board, not being a proceeding in respect of which a suit or appeal to Court is provided by this Act, to satisfy as to the regularity of such proceeding or the correctness, legality or propriety of any decision or order passed therein and if in any case, it appears to the Government that any such decision or order should be modified, annulled, reversed or remitted for reconsideration, the Government may pass orders accordingly.

Provided that the Government shall not pass any order prejudicial to any party, without affording to such party or a reasonable opportunity for being heard.
(2). The Government may stay the execution of any such decision or order, pending the exercise of powers under sub-section (1) in respect thereof.
116. Power to inspect the religious institutions:- (1) Any officer of the Board as prescribed in this behalf shall subject to the conditions and restrictions shall be bound at any reasonable time to inspect all the records connected with the administration of the religious
institutions or endowments attached thereto including any movable or immovable property thereof.
(2) If any record, register or other documents related to the religious institution, an endowment attached thereto kept in any public office of the Government or under the Government, was found to be required in connection with the inspection under subsection (1), the officer authorized by the Board on this behalf, shall subject to the conditions and restriction, may verify the documents or records connected therewith.
117. Court Fees to be paid as specified in the Kerala State Court Fees and Suits Valuation Act, 1956:- Without prejudice to the provisions of the Kerala State Court Fees and Suits Valuation Act, 1956, the proper fees chargeable in respect of the documents described in Column (1) and (2) of the schedule I shall be the fees indicated in Column (3) thereof.
118. Savings:- Nothing contained in this Act shall:
(a) Same as otherwise expressly provided in or under this Act, affect any honour to which any person other than employees of the religious institutions is entitled by custom or otherwise in any religious institution, or its established usages in regard to any other matter; or
(b) authorize any interference with the religious and spiritual functions of the head of the Mutt including those relating to imparting of religious instructions or the rendering of spiritual service.
119. Act not to affect rights under Article 26 Clauses (a) to (c) of the constitution:- Nothing conteined in this Act shall be decmen to confer any power or impose any duty in contravention of this rights
conferred or any religious denomination or any section thereof by clauses (a), (b) and (c) of Article 26 of the constitution.
120. Power to make rules:- (1) The Government may make rules to carry out all or any of the purposes of this Act not inconsistent therewith.
(2) The power to make rules under this Section shall be subject to the decision of the Board, and publication of it in the Government Gazette.
121. Suits against the Board:- No suits shall be instituted against the Board, in a Court of Law, until the expiration of two months after a notice in writing has been delivered under registered post, to the Secretary of the Board stating the cause of action, the relief sought and the name and place of abode of the intending plaintiff, and the plaint shall contain a statement that such notice has been so delivered and the result of such notice.
122. Power of the Board to make bye-laws:- (1) The Board may make bye-laws not inconsistent with this Act and the rules framed there under for any matter necessary for carrying into effect the objects of this Act.
(2) In particular and without prejudice to the generality of the foregoing power, the Board may make bye-laws with respect to:
(a) the preservation of order and the conduct of proceedings of the Board and its implementation;
(b) the functions and procedure of the Standing Committees;
(c) the fee to be levied on applicants under this Act, before it or any of its committees or before the President or any of the officers or servants of the Board and on applications for copies of proceedings or other record of the Board;
(d) the form of the register to be prepared and maintained by the Board and the religious institutions, endowments, and trusts;
(e) the books and accounts to be kept in the office of the religious institutions, endowments and trusts;
(f) the accounts, reports and returns to be submitted by the institutions under the Act;
(g) conditions of service including the powers and duties of the officers and servants of the Board and the religious institutions;
(h) the allocation of duties to the President, members and standing committees;
(i) the Security to be furnished by the officers and servants of the Board and the religious institutions;
(j) the designated employee by whom receipt may be granted for money received;
(k) the custody of the common seal, registers and records, stock and stores etc;
(1) the manner in which the decision of the Board may be ascertained otherwise than at meetings;
(m) the form of particulars to be contained in the Budget of the Board and the religious institutions;
(n) the manner in which the business of various standing committees shall be conducted, the staff required for such committees, the traveling allowances to be paid to the members of such committees for attending meetings and undertaking journeys in connection with the affairs of \$uch
committee, and the publication of notices, decisions and orders of the Board.
(3) Such bye-laws shall be made after previous publication in the Gazette.
123. Maintenance of record of the Board:- The Board shall maintain all its records duly catalogued and indexed in a manner as prescribed in the Right to Information Act, 2005 and shall constitute a separate computerised wing with such number of staff as may be dicided by the Board with approval of the Government.
124. Repeal:- (1) The Madras Hindu Religious and Charitable Endowments Act, 1951, (Madras Act XIX of 1951) as amended by the Madras Hindu Religious and Charitable Endowments (Amendment) Act, 2008 (Act No. 31 of 2008), the Madras Hindu Religious and Charitable Endowments (Amendment) Act No. 2 of 2014 and the Madras Hindu Religious and Charitable Endowments (Amendment) Act.No. 9 of 2014 are hereby repealed.
(2) The Rules under Madras Hindu Religious and charitable Endowments Act (Madras Act XIX of 1951) are hereby repealed.
(3) The scheme of administration framed under the provisions of the Madras Hindu Religious and Charitable Endowments Act, 1951, by any Court of Law as well as by the authorities under the Act, as amended by the Court are hereby repealed.
125. Effect of repeal of the Madras Hindu Religious and Charitable Endowments Act, 1951:- (1) Notwithstanding the repeal of the Madras Hindu Religious and Charitable Endowments Act, 1951 (hereinafter referred to in this section as the Act)-
(a) all bye-laws made, notifications or certificate issued, orders passed, decisions made, proceedings or action taken shall, in so far as they are not inconsistent with this Act, be deemed
to have been made, issued, passed, taken by the appropriate authority under the corresponding provisions of this Act and shall subject to the provisions of Clause (b) have effect accordingly;
(b) if the Board is satisfied that any such rule, notification, certificate, order, decision, proceedings, action, although not inconsistent, with this Act, would not have been made, issued, passed, taken or in the form adopted, if this Act had been force at the time, the Board shall have power with the concurrence of the Government by order at any time within one year from the commencement of this Act, to cancel or modify in such manner as may be specified in the order, the said rule, notification, certificate order, decision, proceeding, action, and thereupon the same shall stand cancelled, or modified, as specified in the said order, with effect from the date on which it was made or from such later date as may be specified therein;

Provided that before making any such order, the Board shall publish in the Government Gazette notice of their intention to do so, fix a period, which shall not be less than two months from the date of publication of the notice, for the persons affected by the order to show cause against the making thereof and consider their representations if any.
(c) all bye-laws, circulars made by the Board or Commissioner under the said Act shall in so far as they are not inconsistent with this act be deemed to be orders issued by the Board under this Act;
(d) all proceedings pending before the Government, Board, or Commissioner, Deputy Commissioner or $\because$ Assistant Commissioner under the provisions of the said Act, as the

Commissioner of this Act may in so far as they are not inconsistent with the provisions of this Act, be continued by the appropriate authority under this Act;
(e) all suits, cases applications or proceedings taken by, or on behalf of or against, the Board under the provisions of the said Act immediately before the commencement of this Act, may be continued by, or on behalf of, or against the Commissioner, subject to the provisions of, and in so far as they are not inconsistent with this Act;
(f) any remedy by way of application, suit or appeal which is provided by this Act shall be available in respect of proceedings under the said Act pending at the commencement of this Act as if the proceedings in respect of which the remedy is sought had been instituted under this Act.
(2) Notwithstanding anything contained in this Act, the existing president and members of the board, Chairman and members of the Area Committee and the non-hereditary trustees appointed under the provisions of the Madras Hindu Religious and Charitable Endowments Act, 1951, and the hereditary trustees exceeding 70 years of age shall cease to hold their office as the case may be on and from the date of commencement of the Malabar Hindu Religious and Charitable Endowments Act, 2017 (Act No. $\qquad$
126. Power to remove difficulties:- If any difficulty arises in giving effect to the provisions of this Act, the Government may, on recommendation of the Board, by order to do anything lawfully which appears to the Government necessary for the purpose of removing difficulty.

SCHEDULE - I (A)
SUITS
(See Section - 118)
COURT FEE PAYABLE

| Section | Description | Amount |
| :--- | :--- | :---: |
| $45(4)$ | Suits on the decision of the Deputy <br> Commissioner on the disputes | Rs. 500.00 |
| $49(2)$ | Against the order of assumption by the <br> Board. | Rs. 500.00 |
| $53(5)$ | Against the orders issued by issued by the <br> Board exercising power to call for the <br> records and pass orders | Rs. 500.00 |
| $62(4)$ | Against the order in appointing non- <br> hereditary trustees by the Board | Rs. 500.00 |
| $65(6)$ | Against the order of removal or dismissal <br> of a trustee | Rs. 500.00 |
| 74 | For removal of trustees or Madathipathi <br> issued by the authorities under the Act. | Rs. 250.00 |
| $100(3)$ | against order of alienation of properties of <br> the religious institution | Rs. 1000.00 |

SCHEDULE - I (B)
Application to the Court

| Section | Description | Amount |
| :--- | :--- | :--- |
| $44(4) \&(5)$ | Application for eviction of encroachment | Rs. 250.00 |
| 97 | Application for delivery of possession | Rs. 250.00 |

SCHEDULE - I (C)
Application to the Government, Board and Deputy Commissioner

| Section | Description | Amount |
| :--- | :--- | :---: |
| $45(1)$ | Application to the Deputy Commissioner to <br> decide certain disputes. | Rs. 250.00 |
| $47(1)$ | Application for determination and <br> application of defunct religious institutions <br> or persons having interest | Rs. 250.00 |
| $48(1) \therefore$ | Application by the trustee to frame or <br> modification of a scheme | Rs. 250.00 |

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| 48 (5) | Application to the Commissioner for <br> framing or modification of a scheme of <br> administration of a Mutt | Rs. 250.00 |
| :--- | :--- | :---: |
| 49 (a) | Assumption of Management of religious <br> institutions | Rs. 250.00 |
| 53 | Application to the Board for revision. | Rs. 100.00 |
| 54 | Application to transfer the matter to the <br> Commissioner and pass orders | Rs. 100.00 |
| 97 | Application before the Commissioner for <br> certificate | Rs. 100.00 |
| 107 (1) | Application for enforcement of ------ to the <br> Deputy Commissioner | Rs. 100.00 |
| 115 | Application to call for files and disposes of <br> it by the Board | Rs. 100.00 |
| 116 | Applicantion before the Government to call <br> for the files and pass orders | Rs. 100.00 |

SCHEDULE - I (D)
Appeals before the Government, Board, Deputy Commissioner

| Scction | Description of the | Amount |
| :--- | :---: | :---: |
| 52 | All appeals before the authorities <br> under the Act. | Rs. 50.00 |
| $54(5)$ | $"$ | $"$ |
| $65(5)$ | $"$ | $"$ |
| $66(4)$ | $"$ | $"$ |
| $67(4)$ | $"$ | $"$ |
| $7(3)$ | $"$ | $"$ |
| $115(2)$ |  |  |

## SCHEDULE - II

## ELECTION RULES

1. The person commissioned by the Governor to preside over the meeting for the election of members to the Board (hereinafter in these rule referred to as the Chairman) shall fix the date, the time and the place for the presentation of nomination papers and intimate the Hindu Members of the Legislative Assembly with the details of the number and category of seats to be filled up by the
election before seven clear days from the date fixed for the presentation of nomination papers.
2. Any Hindu Member of the Legislative Assembly of the State may nominate a qualified person belonging to the category of vacancy, is not subject to any disqualification for election as a members of the Board by delivering to the Chairman, between the hours fixed by the Chairman for the receipt of nomination papers, a nomination paper signed by the proposer and another Hindu member of the Legislative Assembly of the State as seconder and stating the name of the person nominated. The person nominated shall affix his signature to the nomination paper before it is delivered to the Chairman, stating that he is willing to serve as a member of the board, if elected.
3. The Chairman shall, as soon as the time fixed for the receipt of nomination papers is over scrutinize the nomination papers in the presence of the candidates; proposers or seconders present and reject any invalid nomination.
4. Any person, who has been nominated may withdraw his candidature at any time before the Chairman proceeds to hold the election.
5. (1) If there is only one candidate for a seat, the Chairman shall declare him duly elected.
(2) If the number of contesting candidates for a seat is more than one, a poll shall be taken on the same day or another day as may be fixed by the Chairman.
(3) If there is no candidate for a seat, election proceedings, shall be started afresh for filling up the vacancy in all respects as if for a new election.
6. For the purpose of these rules, Members of the Legislative Assembly shall mean a Member who has taken the Oath prescribed
for the Members of the Legislative Assembly and signed the register of Members of the Legislative Assembly.
7. Every Hindu Member of the Legislative Assembly shall have one vote for the election to the seat of woman member under clause (g) of sub-section (3) of section 7 of the Act and one vote each for the seats of the other two members under clause ( h ) thereof.
8. The poll shall be held on the date, time and place fixed by the Chairman and the counting of votes shall take immediately after the close of the polling.
9. The candidate for each seat who obtained the highest number of votes shall be declared elected by the Chairman.
10. In the case of equal number of votes, the result shall be decided by draw of lots".

SCHEDULE - III
LIST OF RELIGIOUS INSTITUTIONS
(To be Attached)


Piglorfor:
6). 09. 217
K. GOBACAMRISH NAN chainman.



[^0]:    than those conferred on the Wakf Board
    under the Wakf Act.

